

N8UAAPER1

Jury Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

S1 22 CR 644 (JSR)

5 STEVEN PEREZ, A/K/A "LUCHA",

6 Defendant.

7 -----x

8 New York, N.Y.
9 August 30, 2023
10:00 a.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge

13
14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
17 Southern District of New York

ASHLEY NICHOLAS

17 MADISON SMYSER

SARAH MORTAZAVI

18 Assistant United States Attorneys

19 FEDERAL DEFENDERS OF NEW YORK

Attorneys for Defendant Perez

20 ZAWADI BAHARANYI

AMANDA MAYO

21 ALSO PRESENT: ANANYA SANKAR, Paralegal, U.S. Attorney's Office

22 ARJUN AHUJA, Paralegal, U.S. Attorney's Office

23 SARAH KWON, Paralegal, Federal Defenders of New York

N8UAAPER1

Jury Trial

1 (Trial resumed; Jury not present)

2 THE COURT: Please be seated.

3 Let me ask defense counsel, we only need one defense
4 counsel, what's the story?

5 MS. MAYO: Your Honor, we separated so we could bring
6 our materials in. I think they might be delayed in security
7 while the defendant answered his phone. We can check to see
8 where they are.

9 THE COURT: Okay. I'm a little disappointed because
10 we're starting at 10:00 and I asked everyone to be here at
11 9:45.

12 MS. MAYO: Yes. I'm sorry, your Honor. I believe
13 they the defendant is just going through security now.

14 THE COURT: Let's get the witness on the stand and
15 bring the jury in now that defendant and counsel are now here.

16 (Jury and witness present)

17 THE COURT: Please be seated.

18 Good morning, ladies and gentlemen. Thank you for
19 your promptness and I also want to thank several of the ladies
20 of jury for wearing such wonderful outfits today. Very
21 colorful. Very useful. The men...

22 Okay. We're ready to proceed.

23 BY MS. SMYSER:

24 Q. Good morning, Sergeant Jones.

25 A. Good morning.

N8UAAPER1

Jury Trial

1 Q. Yesterday we left off, we had been discussing Government
2 Exhibit 531, the Glock that's in front of you.

3 Do you remember that?

4 A. Yes, ma'am.

5 Q. Could you now please take a look in the binder in front of
6 you for what's been marked for identification as Government
7 Exhibits 532A and 533A, which should be in the back.

8 Do you recognize those?

9 A. Yes, ma'am.

10 Q. What are they?

11 A. The live ammunition and the magazine feeding device.

12 Q. For the 22 caliber?

13 A. Yes, ma'am.

14 Q. Are they a fair and accurate representation of the bullets
15 and magazine?

16 A. Yes, they are.

17 MS. SMYSER: Your Honor, the government offers
18 Government Exhibit 532A and 533A.

19 THE COURT: Any objection other than the ones that are
20 preserved from yesterday?

21 MS. MAYO: None other than those, your Honor.

22 THE COURT: Very good. The exhibits are received.

23 (Government's Exhibits 532A and 533A received in
24 evidence)

25 MS. SMYSER: May we publish?

N8UAAPER1

Jury Trial

1 THE COURT: Please.

2 MS. SMYER: Ms. Sankar, can you please publish
3 Government Exhibits 532A around 533A side by side.

4 (Pause)

5 Q. Sergeant Jones, what's on the left side of the screen?

6 A. The live ammunition that I did handle myself.

7 Q. What about on the right side?

8 A. The magazine or feeding device that I handled myself.

9 Q. Just remind us, could these bullets and this magazine be
10 used with Government Exhibit 531, the Glock?

11 A. Yes.

12 Q. Are you familiar with blank ammunition?

13 A. Yes.

14 Q. What is that?

15 A. Blank ammunition is a form of ammunition just excluding the
16 projectile or bullet on the front end in place of the bullet or
17 projectile on the front end. That area would be crimped and
18 closed.

19 Q. Are these real bullets or blank bullets that are on the
20 screen?

21 A. These are live bullets.

22 Q. Sergeant Jones, could you now please look to your right for
23 what's been marked for identification Government Exhibit 532
24 and 533.

25 (Pause)

N8UAAPER1

Jury Trial

1 Q. Do you recognize those?

2 A. I do.

3 Q. What are they?

4 A. 532 has the live ammunition with my initials and my dated
5 time of handling this evidence. 533 is the magazine feeding
6 device that I did also handle, initial and date the closing of
7 it with tamper resistant tape.

8 MS. SMYER: Your Honor, the government offers
9 Government Exhibit 532 and 533.

10 THE COURT: With the same qualification, they are
11 received.

12 (Government's Exhibits 532 and 533 received in
13 evidence)

14 Q. Sergeant Jones, could you please open up 532.

15 (Pause)

16 Q. Could you please hold one of those up for the jury?

17 (Pause)

18 Q. Could you explain what that is?

19 A. This is one piece of live unspent ammunition that has not
20 been fired by any type of weapon.

21 Q. Are there more?

22 A. Yes, they are.

23 Q. How many?

24 A. Nine.

25 Q. Is that how many .22 caliber bullets were originally found?

N8UAAPER1

Jury Trial

1 A. No.

2 Q. How many were there?

3 A. One more, equaling ten.

4 Q. How do you know that?

5 A. The one I used as a testing device.

6 Q. What was the result of your testing?

7 A. That it was and functioned and manufactured as ammunition.

8 Q. Does that mean you fired the gun using that test bullet
9 that had been seized?

10 A. Yes.

11 Q. Could you please set down Government Exhibit 532 and open
12 up Government Exhibit 533.

13 (Pause)

14 Q. Hold that up for the jury and explain what it is please.

15 A. This is a magazine or feeding device. When I say "feeding
16 device", it's a device with the ammunition that I just showed
17 you would be pushed down and held in place by this feeding
18 device.

19 MS. SMYSER: You can take this down off the screen.

20 Q. Sergeant Jones, were other firearms, ammunition and
21 magazines seized on July 3rd?

22 A. Yes.

23 MS. SMYSER: Ms. Sankar, could you please display
24 Government Exhibits 311 through 314 together on the screen.

25 (Pause)

N8UAAPER1

Jury Trial

1 Q. Sergeant Jones, in brief what is pictured here?

2 A. What's pictured here are three long guns rifles and one
3 pistol.

4 Q. Where did these come from, generally?

5 A. From the vehicles that we did have a search warrant for and
6 did search same for in finding those items.

7 Q. From that van and that Honda Ridgeline that we talked about
8 yesterday.

9 A. Yes.

10 MS. SMYSER: Okay. Ms. Sankar, could you please
11 display Government Exhibits 315 and 318 side by side.

12 (Pause)

13 Q. Sergeant Jones, where did these items come from, generally?

14 A. From the vehicles that we did have a search warrant and
15 these items were produced from the vehicles.

16 Q. How many firearms are pictured here?

17 A. Two.

18 Q. Approximately, how many magazines are there?

19 A. Approximately, 19.

20 Q. Is there ammunition here?

21 A. Yes.

22 Q. Is it blank ammunition or real ammunition?

23 A. Real ammunition.

24 Q. Approximately, how much real ammunition?

25 A. In excess of over a thousand live cartridges, live rounds.

N8UAAPER1

Gutierrez - Direct

1 MS. SMYSER: Your Honor, may I have just a moment?

2 THE COURT: Yes.

3 (Pause)

4 MS. SMYSER: Nothing further, your Honor.

5 THE COURT: Cross-examination?

6 MS. MAYO: No questions, your Honor.

7 THE COURT: Thank you very much. You may step down.

8 Please call your next witness.

9 MS. NICHOLAS: Your Honor, the government calls
10 Paralegal Specialist Julia Gutierrez.

11 JULIA GUTIERREZ,

12 called as a witness by the Government,

13 having been duly sworn, testified as follows:

14 COURTROOM DEPUTY: State your name and spell it
15 showily for the record.

16 THE WITNESS: My name is Julia Guitierrez, J-u-l-i-a,
17 G-u-t-i-e-r-r-e-z.

18 THE COURT: Counsel.

19 MS. NICHOLAS: Thank you, your Honor.

20 DIRECT EXAMINATION

21 BY MS. NICHOLAS:

22 Q. Good morning.

23 A. Good morning.

24 Q. Please introduce yourself to the jury.

25 A. My name is Julia Gutierrez. I work with the U.S.

N8UAAPER1

Gutierrez - Direct

1 Attorney's Office. I am a paralegal.

2 Q. Ms. Gutierrez, could you just get a bit closer to the
3 microphone and repeat your name and job for the jury.

4 A. Sorry. My name is Julia Gutierrez. I am a paralegal at
5 the U.S. Attorney's Office.

6 Q. When you said you work at the U.S. Attorney's Office, how
7 long have you worked there?

8 A. Over a year.

9 Q. What's your role there?

10 A. I am a paralegal in the Criminal Division.

11 Q. Can you explain what that means?

12 A. I draft legal documents for the attorneys. We handle
13 evidence in a process called discovery. We assist with trials.
14 Also sometimes ask to give sworn testimony like I'm doing
15 today.

16 Q. Now, Ms. Gutierrez, were you asked to undertake certain
17 tasks in preparing to testify today?

18 A. Yes.

19 Q. Broadly speaking, can you describe what some of those tasks
20 were?

21 A. I was asked to create a chart based on some documents and
22 read some other documents.

23 Q. You were asked to review documents and create a document.

24 A. Yes.

25 Q. Were you in any way personally involved in the

N8UAAPER1

Gutierrez - Direct

1 investigation of Steven Perez, Lucha El?

2 A. No.

3 Q. Now, in preparing to testify today did you review all the
4 records in this case?

5 A. No.

6 Q. Did you review just a portion?

7 A. Yes.

8 Q. And apart from those materials to what extent are you
9 familiar with this case?

10 A. Not very familiar at all.

11 Q. When we're talking about the materials that you reviewed
12 for today, did you make decisions about what to review?

13 A. No.

14 Q. Who made those decision?

15 A. The prosecutors on the case.

16 Q. Okay. Now, I want to begin your testimony by talking about
17 that chart you mentioned a second ago.

18 I'm going to show you a binder that contains what's in
19 evidence as Government Exhibits 411 through 423 and 426. If
20 you could just flip through the tabs in there marked as 411 to
21 423 and then skip to 426.

22 (Pause)

23 MS. NICHOLAS: When you are done look up.

24 Q. Ms. Gutierrez, have you seen those documents before?

25 A. Yes.

N8UAAPER1

Gutierrez - Direct

1 Q. When did you see those?

2 A. About a week ago -- reviewing them since about yesterday.

3 Q. Now, have you consulted those documents in creating a
4 summary chart for this case?

5 A. Yes.

6 MS. NICHOLAS: Can you please show at witness only
7 what has been marked as Government Exhibit 902.

8 (Pause)

9 MS. NICHOLAS: Your Honor, I think we're having some
10 technical difficulties. Can you just indulge us for one
11 moment?

12 THE COURT: All right.

13 (Pause)

14 MS. NICHOLAS: Ms. Gutierrez, we're going to come back
15 to that in a moment.

16 With the Court's permission I would like to read part
17 of the Government Exhibit stipulations that was admitted
18 yesterday as Government Exhibit 1003.

19 THE COURT: Okay.

20 MS. NICHOLAS: Per the stipulation, between the
21 parties as memorialized in Government Exhibit 1003 on or about
22 June 23, 2021, law enforcement officers in the Bronx, New York
23 arrested Steven Perez, a/k/a "Lucha", the defendant, and
24 recovered from his person Government Exhibit 523, a black LG
25 cellphone used by the defendant.

N8UAAPER1

Gutierrez - Direct

1 Government Exhibits 1101-1110 including all subparts
2 are true and accurate copies of data extracted from the
3 defendant's phone.

4 At this time, your Honor, the government offers
5 Government Exhibit 523, as well as Government Exhibits 1101, is
6 1103A, 1103B, 1104, 1105, 1106, 1107, 1108, 1109 and 1110.

7 (Pause)

8 MS. BAHARANYI: Your Honor, we do have an objection.
9 We'd like to approach briefly.

10 THE COURT: All right.

11 (Continued on next page)

N8UAAPER1

Gutierrez - Direct

1 (side bar)

2 MS. BAHARANYI: Regarding the first one that you
3 mentioned was just the phone itself.

4 MS. NICHOLAS: 23.

5 MS. BAHARANYI: We don't have an objection to that.
6 The text messages though I think it would help to go in order
7 with what our objections are. The first one that you are
8 seeking to admit is 1101.

9 MS. NICHOLAS: The user device information.

10 MS. BAHARANYI: That one is fine. 1102.

11 MS. NICHOLAS: We're not seeking to admit that. The
12 next one was 1103A.

13 MS. BAHARANYI: So for that particular exhibit, your
14 Honor, I am going to show you what is -- one moment.

15 (Pause)

16 MS. BAHARANYI: That particular exhibit seems to be
17 discussing other, during dates other than the June 23rd date
18 when Mr. Lucha was arrested seems to be discussing law
19 enforcement or cop activities without any sort of context. We
20 think that that being presented to the jury, the full range of
21 those texts there are certainly more prejudice than relevant in
22 this case. He wasn't arrested on that date which I believe is
23 the June 17th date. That's correct.

24 THE COURT: All right. What's the government say?

25 MS. NICHOLAS: Your Honor, this is a conspiracy that

N8UAAPER1

Gutierrez - Direct

1 spanned between 2020 and 2021 inclusive of this time period.
2 The defend has made clear that the cornerstone of the defense
3 here is the willfulness -- all of this is indicative of the
4 awareness of the police, awareness of his unlawful conduct,
5 awareness of where law enforcement is at all times. I'll note
6 the person who he is talking to in those texts, we've been
7 referring to Alban El Curragh, Aaron Jiminez, one of the other
8 individuals arrested with him in Massachusetts with the
9 firearms.

10 THE COURT: This is from that gentleman to whom?

11 MS. NICHOLAS: To Lucha, the defendant.

12 MS. BAHARANYI: The particular date, your Honor, has
13 no relevance to this conspiracy. They have not raised that
14 this was a date where they believed for example he is carrying
15 a firearm. They have not raised where this is a date where
16 they believed he was transferring or receiving a firearm.
17 There is certainly no context. And I think to put this before
18 the jury, just conversation that people may have in the Bronx
19 about law enforcement activity in their neighborhoods which can
20 sometimes be dangerous, this leaves an impression that
21 certainly is unduly prejudicial to Lucha without context and
22 they don't have context.

23 MS. NICHOLAS: It's June 17th, your Honor. He is
24 arrested with a gun in the Bronx on June 23rd. Then he is
25 arrested in Massachusetts on July 3rd.

N8UAAPER1

Gutierrez - Direct

1 MS. BAHARANYI: We don't object to them admitting text
2 messages about police activities on those dates, your Honor.

3 THE COURT: The objection is sustained.

4 MS. BAHARANYI: So the next one is you are envisioning
5 to enter --

6 MS. NICHOLAS: 1103B, everything from this series,
7 your Honor, is a conversation with the defendant from his
8 phone.

9 MS. BAHARANYI: We don't have an objection to that.

10 MS. NICHOLAS: 1104.

11 MS. BAHARANYI: No objection to that.

12 MS. NICHOLAS: Next is 1105.

13 MS. BAHARANYI: We don't have an objection to that
14 one.

15 MS. NICHOLAS: 1106.

16 MS. BAHARANYI: No.

17 MS. NICHOLAS: 1107.

18 MS. BAHARANYI: Nor that one. It would be helpful to
19 show.

20 (Pause)

21 MS. BAHARANYI: Your Honor, that one also raised in
22 the June 17 text without any context. If you can see the first
23 part of the conversation seems to be talking about.

24 THE COURT: Sustained. The objection is sustained.

25 Are we going to be here much longer?

N8UAAPER1

Gutierrez - Direct

1 MS. NICHOLAS: There's three other series of text
2 messages. I expect that this is going to happen repeatedly.

3 THE COURT: Well, so I think the way to do this is
4 let's get this series done. Then if we have to have further
5 side bars we will but I don't want to keep the jury just
6 sitting there.

7 MS. NICHOLAS: 1108.

8 MS. BAHARANYI: That's the same issue, your Honor,
9 about the June 17th date, the blue and whites.

10 MS. NICHOLAS: He is now talking to multiple people
11 about the presence of police days before he gets arrested with
12 a gun he got illegally.

13 THE COURT: The problem is there's no context for
14 these earlier. If this had been a date after some of the
15 events that you've referred to, I could see the relevance.

16 MS. NICHOLAS: It's a date after trips from -- he had
17 already had to gun. Vereen has already been traveling to the
18 Bronx repeatedly.

19 MS. BAHARANYI: Those are trips that would have ended
20 in November 2020.

21 THE COURT: I think it's very hard for the jury to see
22 the relevance. The objection is sustained.

23 MS. NICHOLAS: 1109.

24 MS. BAHARANYI: No objection there.

25 MS. NICHOLAS: 1110.

N8UAAPER1

Gutierrez - Direct

1 MS. BAHARANYI: No objection.

2 MS. NICHOLAS: Just to be clear, 1107 and then 1108.

3 THE COURT: Okay.

4 (Continued on next page)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

N8UAAPER1

Gutierrez - Direct

1 (In Open Court)

2 MS. NICHOLAS: Ms. Sankar, if you could please publish
3 what's now in evidence as Government Exhibit 1101.

4 (Pause)

5 Q. Ms. Gutierrez, before we continue, can you just describe
6 for the jury what's on the screen at a very high level. Are
7 you familiar with these types of reports?

8 A. Yes.

9 Q. What type of report is this?

10 A. It's a Cellebrite report.

11 Q. What is Cellebrite?

12 A. It's a platform we use in the office when we receive or we
13 seize a phone from somebody. When we get the data out of the
14 phone we put it into Cellbrite because Cellbrite makes it
15 easier for us to manage and look through the data.

16 MS. NICHOLAS: So this information here in Government
17 Exhibit 1101 which per the stipulation is from the defendant's
18 phone.

19 Ms. Sankar, if you could please zoom in on the section
20 that says MSISDN at the top.

21 Q. Ms. Gutierrez, if you could just read that phone number.

22 A. It's it 16467241423.

23 MS. NICHOLAS: Ms. Sankar, if you could zoom back out
24 and zoom in on where it says last known use.

25 (Pause)

N8UAAPER1

Gutierrez - Direct

1 Q. Just above where it says MSISDN for first time could you
2 please read what that says.

3 A. May 21, 2021.

4 Q. And the next?

5 A. June 20, 2021.

6 Q. And the last one?

7 A. June 16, 2021.

8 MS. NICHOLAS: Okay. Ms. Sankar, if you could zoom
9 back out.

10 Q. Now the bottom half of this screen could you read what
11 that's labeled in that second section?

12 A. User accounts.

13 Q. Okay. What is listed in that section?

14 A. Certain applications that were used.

15 MS. NICHOLAS: Ms. Sankar, could you flip to row 186
16 and zoom-in on that row.

17 (Pause)

18 Q. Ms. Gutierrez, what application is listed in row 186?

19 A. Telegram.

20 Q. Are you familiar with telegram?

21 A. Yes.

22 Q. How are you familiar with telegram?

23 A. From working in the office.

24 Q. In broad terms, what is telegrams?

25 A. It is an encrypted messaging app.

N8UAAPER1

Gutierrez - Direct

1 MS. NICHOLAS: If you could zoom out and a zoom back
2 in on row 1906.

3 (Pause)

4 Q. What application is listed in row 190?

5 A. What's App.

6 MS. NICHOLAS: You can zoom back out can you please
7 publish what's now in evidence as Government Exhibit 1103B.

8 (Pause)

9 Q. Ms. Gutierrez, what's depicted on the screen?

10 A. A Cellebrite report.

11 Q. What does the Cellebrite report show in general terms?

12 A. Messages.

13 Q. Now at the top who is the user listed as one of the
14 participants in the conversation?

15 A. The contact name is Alban El Curragh.

16 MS. NICHOLAS: If you could zoom-in on that actually.

17 (Pause)

18 Q. Ms. Gutierrez, could you read that phone number into the
19 record, please?

20 A. 3475028867.

21 MS. NICHOLAS: Okay. Now, in this conversation
22 Ms. Sankar could you actually go to the next page for us page
23 two. There are two different color bubbles.

24 Q. Can you explain to the jury who's speaking in each of the
25 bubbles?

N8UAAPER1

Gutierrez - Direct

1 A. So it's like an iPhone. The owner of the phone is on the
2 right and the other party is on the left.

3 Q. So, green is the owner of the phone?

4 A. Green is the owner of the phone and on the left in blue is
5 Alban El Curragh.

6 MS. NICHOLAS: Per the stipulation, the owner of phone
7 is the defendant going back at first page of 1103, Ms. Sankar.

8 Q. Ms. Gutierrez, before you begin reading can you please read
9 the date stamp that's listed in that first message?

10 A. June 21, 2021.

11 Q. I am going to ask you to read what's in the blue bubbles
12 and I will read what's in the green bubbles.

13 "A. Do you need a day pack/military bag? I might order one.

14 "Q. I got a bag already. Same backpack. Got more.

15 "A. I need that then. So I'll order mine.

16 MS. NICHOLAS: Ms. Sankar, you can pull this down.
17 If you could please publish what's in evidence as
18 1104.

19 (Pause)

20 Q. Okay. Ms. Gutierrez, can you describe what's on the
21 screen?

22 A. It's a picture of a phone with text messages.

23 Q. Are these messages being sent in any particular
24 application?

25 A. Yes, Signal.

N8UAAPER1

Gutierrez - Direct

1 Q. How can you tell that?

2 A. At the bottom and at the top it says "signal".

3 Q. Are you familiar with, signal?

4 A. I am.

5 Q. What is Signal?

6 A. It is an encrypted messaging app.

7 Q. Looking at what's on the screen in Government Exhibit 1104,
8 similar to what you explained with the prior report can you
9 just explain what the messages on the screen mean in terms of
10 who is sending them?

11 A. So the owner of the phone would be on the right and then
12 the other person, the other party is on the left in the purple.

13 Q. Now, the other party in 1104, can you read that other
14 party's name?

15 A. It's Jamil R. Bey.

16 Q. Can you read the number associated with that name?

17 A. 6469738605.

18 Q. Can you just read the date and time of the message on that
19 particular message?

20 A. June 19, 2021 at 1:09 p.m.

21 MS. NICHOLAS: Can you please publish what's in
22 evidence as Government Exhibit 1105.

23 Q. Ms. Gutierrez, again explain what we're seeing on the
24 screen here?

25 A. It's another picture of the phone with text messages pulled

N8UAAPER1

Gutierrez - Direct

1 up.

2 Q. What application are these messages in?

3 A. Signal.

4 Q. Now here there are two individuals, it appears, discussing,
5 can you describe how you know which individual is speaking?

6 A. On their right is the owner of the phone in the gray text
7 message or the gray signal messages and on the left is the
8 other party which according to the photo is someone that goes
9 by "Divine Bey Justice" or that's the contact name.

10 Q. The other party, what color are their messages in?

11 A. Blue.

12 Q. The gray message here is the owner of the phone, as per the
13 stipulation, is the defendant and the blue messages are the
14 other contact?

15 A. Yes.

16 Q. I am going to direct your attention to the bottom of this
17 photograph. Can you read what begins with "you"?

18 "A. You should come to the three day train.

19 Q. Do you notice anything about that particular message?

20 MS. NICHOLAS: Ms. Sankar, I'm going to ask you to
21 pull the highlight off of that.

22 A. Well, "should" is spelled incorrectly, "train" it's like
23 cut off. I don't know if's supposed to be "train" or
24 "training". It says "cone" instead of "come" actually.

25 Q. Is that in the message.

N8UAAPER1

Gutierrez - Direct

1 A. It is not.

2 Q. How do you know that?

3 A. Because it's still in the little text bar.

4 MS. NICHOLAS: Ms. Sankar, pull that down and please
5 publish what's in evidence as Government Exhibit 1106.

6 (Pause)

7 Q. Okay. So on this one I don't want to read any of the
8 messages. I just want to focus on who is participating in the
9 conversation here. Can you please read the name of the contact
10 in the Signal message?

11 A. Alban El Curragh.

12 Q. What's number associated with that use?

13 A. 3475028867.

14 MS. NICHOLAS: You can it pull that down. We are
15 going to move to 1109. And publish that please.

16 (Pause)

17 Q. Can you explain what we're looking at on the screen here?

18 A. That's a picture of a phone.

19 Q. Is there any particular application open?

20 A. Signal.

21 Q. What is depicted inside the Signal app on this particular
22 screen shot?

23 A. It shows that there's missed calls between the parties.
24 Also, that the owner of the phone called this person a couple
25 times.

N8UAAPER1

Gutierrez - Direct

1 Q. Can you read the name of the contact?

2 A. Will El Musa.

3 Q. And the phone number?

4 A. 9176895444.

5 MS. NICHOLAS: We can pull that down. If we can
6 please publish what's in evidence as Government Exhibit 1110.

7 (Pause)

8 Q. We're shifting gears a bit here.

9 What's depicted on the screen in Government Exhibit
10 1110?

11 A. Cellebrite report.

12 Q. If you could just remind us what is the Cellebrite report?

13 A. It's a report that we get from that application called
14 Cellebrite which extracts data from the phone.

15 Q. Okay. Now at the top just above this section, what does
16 the header say?

17 A. Instant messages.

18 MS. NICHOLAS: Okay. Could you just zoom-in on the
19 first row.

20 (Pause)

21 Q. I want to begin with the timestamp. Can you please read
22 the timestamp for this message?

23 A. May 10, 2021 at 4:30 p.m.

24 Q. Okay. And under content, the direction, can you read that?

25 A. Incoming.

N8UAAPER1

Gutierrez - Direct

1 Q. The body of the message?

2 A. And third through the seventh.

3 Q. Moving down a couple rows within this, can you read the
4 status?

5 A. It says status read.

6 Q. Staying here in row one, can you read the contact name.

7 MS. NICHOLAS: Excuse me. If we could zoom out and
8 capture that header as well.

9 (Pause)

10 Q. Who is this message from?

11 A. Jamil.

12 Q. What is the phone number associated with Jamil?

13 A. 16469738605.

14 MS. NICHOLAS: Zoom back out.

15 (Pause)

16 Q. Going to the messages below that number two, row two. Is
17 this message also from Jamil?

18 A. Yes.

19 Q. Can you just read the body of that message?

20 A. Moor, we got training in July.

21 Q. What's the status of that message?

22 A. Read.

23 MS. NICHOLAS: You can zoom back out. You can pull
24 this down.

25 (Pause)

N8UAAPER1

Gutierrez - Direct

1 Q. Ms. Gutierrez, I want to shift gears for a moment and go
2 back to talking about the chart that you made.

3 Earlier you testified that you reviewed some documents
4 and records to put together a chart; is that right?

5 A. Yes.

6 Q. And those documents and records were in the binder 411 to
7 422 and 426?

8 A. Yes.

9 MS. NICHOLAS: Okay. Can you we publish for the
10 witness Government Exhibit 902.

11 (Pause)

12 Q. Ms. Gutierrez, do you recognize this document?

13 A. Yes.

14 Q. Broadly speaking, what is this?

15 A. The chart.

16 Q. Did you create this chart?

17 A. Yes.

18 Q. Now in creating this chart did you review information
19 contained in other documents in evidence in this case?

20 A. Yes.

21 Q. Specifically, to create the chart did you review Government
22 Exhibits 411 to 422 and 426?

23 A. Yes.

24 Q. Based on your review of those underlying documents, is the
25 information contained in Government Exhibit 902 a true and

N8UAAPER1

Gutierrez - Direct

1 accurate summary of the information associated with guns
2 purchased in this case?

3 A. Yes.

4 MS. NICHOLAS: Your Honor, the government offers
5 Government Exhibit 902.

6 MS. BAHARANYI: Objection, your Honor.

7 THE COURT: Received.

8 (Government's Exhibit 902 received in evidence)

9 MS. BAHARANYI: I said "objection", your Honor, but I
10 think --

11 THE COURT: No. I heard you. Received.

12 MS. NICHOLAS: If you could publish 902.

13 (Pause)

14 Q. So before we begin talking about content I want to take a
15 second orient the jury to what's in this chart. Before we talk
16 about any specific columns, can your just explain what this
17 chart is in very general terms?

18 A. It is a chart that reflects some documents that record
19 firearms transactions.

20 Q. Now, when is the last time -- let me back up. Did you
21 revise this chart at any point in preparing to testify?

22 A. Yes.

23 Q. When is the last time you revised it?

24 A. Yesterday.

25 Q. Were those revisions to reflect evidence that actually had

N8UAAPER1

Gutierrez - Direct

1 been admitted at this trial?

2 A. Yes.

3 MS. NICHOLAS: So let's just go over what the
4 information is in the chart and then we'll get into substance,
5 okay. Before we dig in, I'm going to have you zoom-in on this
6 very top row, the darker blue.

7 (Pause)

8 Q. So, Ms. Gutierrez, what I want to do is walk from left to
9 right and talk about the type of information in each of these
10 columns. So beginning on the far left, that column header says
11 N-O number.

12 What is in that column?

13 A. That's just the number of the transaction for our
14 reference.

15 Q. Does that come from any form?

16 A. No.

17 Q. That's just used for ease of reference?

18 A. Yes.

19 Q. The next column date of transfer box 37, 36 first date of
20 transfer, where did you get that information from?

21 A. From the form.

22 Q. Okay. And what does box 37 and 36 refer to?

23 A. So there are two versions of the form in the ATF. One is
24 the older version and one is the new version. They reflect the
25 same information but they're just different box numbers. So,

N8UAAPER1

Gutierrez - Direct

1 box 37 is the box that had date of transfer in the old form and
2 box 36 is the box it had date of transfer in the new form.

3 Q. Okay. Next column is labeled "FFL name". Where did that
4 information come from?

5 A. Box 33 in both of forms, that would state the same.

6 Q. Next column?

7 A. It's the buyer's full name.

8 Q. Where does that come from?

9 A. Box one on the old form and box nine on the new form.

10 Q. Okay. Next column?

11 A. It's the manufacturer and caliber of the gun. The
12 manufacturer portion that comes from box 24 on the old form and
13 box one on the new form. And then for the caliber portion that
14 comes from box 28 on the old form and box five on the new form.

15 Q. Okay. Serial number?

16 A. That comes from box 26 on the old form and box three in the
17 new form.

18 Q. Then the furthest all the way is labeled "GX"?

19 A. That's Government Exhibit number. It's stamped on the
20 bottom of the exhibits that I looked at.

21 Q. Does the government exhibit number correspond with the
22 information from the form?

23 A. Yes.

24 MS. NICHOLAS: Okay. So if you could zoom out and
25 just zoom in on the header line as well as row one.

N8UAAPER1

Gutierrez - Direct

1 (Pause)

2 Q. If the jury wanted to look for an underlying documents
3 associated with this transaction, what government exhibit would
4 they go to?

5 A. 411.

6 MS. NICHOLAS: Okay. You can pull that down.

7 (Pause)

8 MS. NICHOLAS: I want to talk about two of these guns
9 specifically. Could you please zoom-in on row five.

10 (Pause)

11 Q. Ms. Gutierrez, I am just going to ask you to read from the
12 furthest left column to the furthest right. If you could just
13 remind us of the column header as you go.

14 A. So this is transaction number five in this chart. The date
15 it was transferred is July 23, 2020. The FFL name is Elite
16 firearms. The buyer's full name is Keith Anthony Vereen. The
17 manufacturer of the weapon is a Gloc1 or it's a Glock. And the
18 caliber is .22 LR. The serial number is AELY222 and the
19 underlying document is Government Exhibit 413.

20 MS. NICHOLAS: We can pull that down and whereas
21 zoom-in next ON row 14.

22 (Pause)

23 Q. I am going to ask you to DO THE same thing. Just walking
24 us from left to right with the column headers, if you could
25 read row 14?

N8UAAPER1

Gutierrez - Direct

1 A. So, in this chart it is transaction number 14. The date of
2 transfer is October 1, 2020. The FFL was Dick's Pawn Shop
3 West. The buyer's full name is Keith Anthony Vereen. The
4 manufacturer of firearm is Canik and the caliber is .9
5 millimeter. Serial number is 20CB25810. And the underlying
6 record is Government Exhibit 418.

7 Q. Ms. Gutierrez, again, did you make any decisions about what
8 information should be in this chart?

9 A. No.

10 Q. Who did?

11 A. The prosecutors.

12 MS. NICHOLAS: You can pull this down.

13 Your Honor, may we briefly approach?

14 THE COURT: All right.

15 (Continued on next page)

16
17
18
19
20
21
22
23
24
25

N8UAAPER1

Gutierrez - Direct

1 (side bar)

2 MS. NICHOLAS: Your Honor, at this point I plan to
3 transfer to talking about takes messages from phones used by
4 other people in Massachusetts. I expect there'll be objections
5 to nearly every document. This may be a time for a midmorning
6 break and perhaps a longer discussion. I think this would
7 likely be a lengthy conversation.

8 THE COURT: All right.

9 (Continued on next page)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

N8UAAPER1

Gutierrez - Direct

1 (In Open Court)

2 THE COURT: So, ladies and gentlemen, the counsel has
3 informed me that there's a legal issue regarding the next piece
4 of evidence that will probably take 15 minutes to resolve. So
5 we are going to give you your morning break. He was going to
6 do it, since we'd only started a 10:00, I was going to wait a
7 little later but I think we'll do it now. So we'll take a
8 15-minute break at this time.

9 (Jury not present)

10 THE COURT: You can step down. I'll see you in 15
11 minutes.

12 (Witness not present)

13 MS. NICHOLAS: Your Honor, the next series of exhibits
14 the government is going to offer come from a phone seized from
15 Jamal Latimer, who your Honor may recall was the leader of the
16 group during the stop in Massachusetts. I am happy to, maybe
17 the easiest way to do this is to list the exhibits planned to
18 admit.

19 THE COURT: OK.

20 MS. NICHOLAS: So we plan to offer 1201, 1202A, 1202B,
21 1202B-1, 1202B-3, 1202B-2, 1202C, "D", "E", "F"; 1202I, 1202J,
22 1204, 1207A and 1208.

23 MS. BAHARANYI: Your Honor, if we may have one moment
24 to review?

25 THE COURT: Yes. Go ahead.

N8UBPER2

Gutierrez - Direct

1 MS. BAHARANYI: Thank you for that moment, your Honor.
2 We understand that the government seeks to admit certain
3 excerpts of a text message chain. We don't have objection to
4 those certain excerpts, so long as the entire chain is actually
5 admitted to the jury, pursuant to the rule of completeness and
6 to make sure that the text messages are placed in their proper
7 context.

8 So that's what we've explained to the government. I
9 believe they have an objection to that.

10 THE COURT: Okay.

11 MS. NICHOLAS: Your Honor, for context purposes, 1202
12 is a group chat between -- I believe there are 51 participants
13 in the chat, all of whom have some affiliation with this Rise
14 of the Moors group to varying extents. Some people are present
15 in the chat. Some are participating. There are members of
16 that chat who are subsequently arrested in Massachusetts with
17 the defendant. That is a very lengthy group chat that meanders
18 into other areas of more ideology. There's parts talking about
19 kind of the background of the trip that's not -- it's simply
20 not relevant. It's distracting. It's confusing.

21 What we've done is call out the for portions that are
22 relevant to the case, and that are standalone explainable on
23 their face. The rule of completeness is all about being able
24 to understand on its face what's happening in a way that's not
25 misleading, which is precisely what these excerpts do. They

N8UBPER2

Gutierrez - Direct

1 are listed A through I, I believe. We've excerpted out portions
2 relevant to the defendant, relevant to that arrest in
3 Massachusetts, leaving aside all the other things. We're
4 talking about a group chat --

5 THE COURT: I get your point. Anything defense
6 counsel want to say?

7 MS. BAHARANYI: Yes, your Honor. They're seeking to
8 admit a number of excerpts or clips from this overall chain
9 which removes the context for the chain, which means it leaves
10 the jury with a certain impression that this chain is only
11 about militia training or firearm training. When in fact --
12 and I'm sure maybe that's what the government wants to leave
13 the jury with the impression with -- but for fairness to Lucha,
14 the jury should see that this is not some group chain that's
15 talking about firearms and militia and that's what it's about.

16 This group chain talks about -- it's almost like it
17 functions as a message board for the members of this group.
18 And I think if we only show these portions that the government
19 considers relevant, what we're doing in fact is just making
20 these messages even more prejudicial without the proper
21 context.

22 THE COURT: All right. So I think this turns on the
23 interpretation of the rule of completeness which has been
24 assessed in numerous cases in the past. It is not a rule that
25 says that if one party offers a specific snippet of evidence

N8UBPER2

Gutierrez - Direct

1 that the entire context is opened up for the jury's
2 consideration. So to give an analogy, if one party sought to
3 introduce half of a sentence, the other side could demand that
4 the full sentence be admitted, but couldn't use that as a
5 device to admit the entire letter that this sentence came from.

6 And I don't really understand the force of the
7 defense's argument in another respect which is that supposing
8 you had a chat room, and over a course of -- in my
9 hypothetical -- ten days several people on the chat room with
10 the acquiescence of the others spelled out how they were going
11 to rob a bank, but the rest of the chat was all about their
12 social lives, their favorite movies, their plans for future
13 happiness or whatever. The fact that all that other stuff was
14 there would not, under the rule of completeness, be, admissible
15 so the objection is overruled and the chats will be received.

16 MS. BAHARANYI: Your Honor, on that point, I do think
17 this is closer to the analogy of your sentence where you excise
18 certain portions of a sentence, it changes the meaning of that
19 sentence. Here if we're excising certain portions of this
20 chat, it changes the meaning and the tone.

21 THE COURT: That wasn't your request. Your request
22 was to put in the whole thing, that's what you specifically
23 asked for. That's what I'm denying. Now if you think there's
24 a particular chat where the exact context is not being
25 faithfully presented because another sentence that follows

N8UBPER2 Gutierrez - Direct

1 immediately is left out or something like that, that's a
2 different story, but that wasn't your argument.

3 MS. BAHARANYI: Your Honor, my comment about the
4 sentence was just to analogize the entire chat.

5 THE COURT: I understand you're arguing for the entire
6 chat. And for the reasons I just said, I'm not persuaded.

7 MS. BAHARANYI: This is a conspiracy case, and the
8 government is alleging that these conversations between these
9 individuals are conversations in furtherance and related to
10 this conspiracy. What they're failing to do is provide the
11 full context so that the conversations could be fully
12 understood.

13 THE COURT: I go come back to what I said before.
14 Supposing you had a conspiracy to rob a bank and to help
15 someone get the best dinner. The conspiracy to help the other
16 person help get the best dinner would not be chargeable as a
17 crime, but there's no reason why that would be at all relevant
18 to the portion of the chat that talked about how the
19 conspirators are going to rob a bank. So I am unpersuaded and
20 the objection is overruled. So we'll take a five-minute break
21 in case anyone needs it.

22 MS. NICHOLAS: Your Honor, if I may. That's only one
23 of the three series.

24 MS. BAHARANYI: In light of that, your Honor, then we
25 do have objections to the specific text that are going to be

N8UBPER2 Gutierrez - Direct

1 admitted without any context, so I think we should review
2 those.

3 THE COURT: Okay.

4 (Pause)

5 MS. BAHARANYI: Your Honor, there's one particular
6 text message that we believe the government is seeking to admit
7 1202J which I think we can pull up. The text itself is on the
8 last page of that.

9 THE COURT: I have to pull it up.

10 MS. BAHARANYI: This is an example of a text with
11 absolutely no context.

12 THE COURT: So the text just for the record says --
13 this is from Mr. Jahmal Abdullah Bey, How far is that from
14 Brooklyn or the Bronx? We have Moors in both areas. So I
15 guess my question to government counsel is, what's the
16 relevance of this?

17 MS. NICHOLAS: It establishes that there's members of
18 this conspiracy, the Moors, in both Brooklyn and the Bronx.

19 THE COURT: When have you -- maybe I missed it. When
20 has there been any reference up to now to the Moors?

21 MS. NICHOLAS: I think we had our first direct Moors
22 reference during one of the earlier text messages. I do think
23 it's now been made clear, and will be certainly by the end, by
24 the end of the text messages it will be clear that these people
25 in Massachusetts called themselves the Moors. If you also

N8UBPER2

Gutierrez - Direct

1 recall, your Honor, in the first body worn camera when the
2 defendant is approached in the Bronx, his first statement to
3 the police is, I'm a Moor. I'm a Moor. Don't touch that. I'm
4 a Moor.

5 THE COURT: The point is -- forgive the bad pun
6 without more -- that would have been meaningless to the jury at
7 the time it was said. He might have been analogizing himself
8 to Othello, so we need greater detail before the jury can
9 appreciate what is meant by Moors there.

10 MS. NICHOLAS: I think one of the concerns, your
11 Honor, is in their opening defense counsel alluded to I think
12 they use trace, right. You can't trace the guns in
13 Massachusetts back to New York, and part of the government's
14 theory here is that --

15 THE COURT: You've answered it. I think it is
16 relevant now that I know what will be in the other messages
17 about the Moors. That was really what gave me pause on this.

18 MS. BAHARANYI: Your Honor, we're certainly not
19 contesting that Lucha is in New York City. This in our view is
20 cumulative. We're not quite sure what additional value it adds
21 to the evidence that's in.

22 THE COURT: It shows that the conspirators include
23 someone in Brooklyn or the Bronx, and of course that is
24 relevant to establishing that -- with other evidence -- that
25 the defendant is part of the conspiracy.

N8UBPER2

Gutierrez - Direct

1 MS. BAHARANYI: The government hasn't put forth any
2 evidence that the conspiracy -- I guess the size of the
3 conspiracy overlaps with the size of Moors, the Moorish
4 community. There seems to be a conflation of the two here.

5 THE COURT: No, I think Moors here -- that's why I
6 raised the question I did before. Moors is a term of art in
7 this case, and it refers to a particular group; namely, the
8 group that's putting all these messages out. This is not a
9 reference to their place of origin or anything like that. It's
10 a term of art.

11 MS. BAHARANYI: That applies to a group broader, much
12 broader, than what the government -- the conspirators in this
13 case, or the alleged co-conspirators. It's a term of art that
14 applies to thousands across the nation. I think what's
15 misleading about this is where -- I think the government is
16 seeking to introduce this as evidence that we have these other
17 alleged co-conspirators in this area, in both areas, and
18 there's no basis or context for them to say that when this text
19 message on its face just refers to Moors, not Rise of the
20 Moors, not our Moorish militia, Moors generally.

21 It's as if saying, we have Americans in this area, now
22 we're assuming it applies to all these people instead of a
23 particular subset that we're looking at. It's an identifier
24 for individuals.

25 MS. NICHOLAS: Context is important here, your Honor.

N8UBPER2

Gutierrez - Direct

1 This is Jahmal Abdullah Bey, the self-appointed leader of the
2 group who introduces the group in a video in evidence refers to
3 the men in that convoy as "My men."

4 And here he is saying "We have Moors in both areas."
5 Not, there are Moors in both areas. There are Moors all over
6 the country. We, the members of this group that is planning
7 this trip in this chat have Moors in both areas.

8 MS. BAHARANYI: In a chat that we can't even get the
9 whole text message in.

10 THE COURT: I understand the defense's objection, but
11 I think this passes the modest requirements of relevance
12 based -- as the government I think correctly pointed out --
13 that the words "We Have" coming from this particular person
14 could reasonably be inferred to be a reference to the
15 conspirators, so the objection is overruled. Can we bring the
16 jury in or does anyone need a break?

17 MS. NICHOLAS: I think we still have two phones to go,
18 your Honor. They're much smaller. I'm not sure if there are
19 other 1200 series objections?

20 MS. BAHARANYI: No, we've raised them.

21 MS. NICHOLAS: So the 1300 series, your Honor. This
22 is a phone belonging to Quinn Cumberlander who is another
23 individual arrested in Massachusetts. We're offering
24 Government Exhibit 1301.

25 THE COURT: Before we go any further, because

N8UBPER2

Gutierrez - Direct

1 yesterday the defendant had a need for frequent breaks. I
2 don't want to have him not take a break now and tell me 15
3 minutes later that he needs a break. So if he needs a break,
4 take it now.

5 MS. BAHARANYI: We took our break, right when we
6 started our argument.

7 THE COURT: I see. Okay. Very good. Thank you. Go
8 ahead.

9 MS. NICHOLAS: For the 1300 series, which is the Quinn
10 Cumberlander phone, is 1301, 1302A, 1303A, 1303B and 1303C.
11 And from the 1400 series which is the Tarrif Bey phone, I
12 believe we're just offering 1402A.

13 THE COURT: Okay. Objections?

14 MS. BAHARANYI: Your Honor, we're just taking a look
15 at the specific exhibits.

16 THE COURT: Take your time.

17 (Pause)

18 MS. BAHARANYI: Your Honor, thank you for bearing with
19 us just sorting through different excerpts and clips. The two
20 objections that we have to the proposed government exhibits are
21 for 1302A and 1402A, which I think we can pull up on the screen
22 for your Honor.

23 MS. NICHOLAS: Your Honor, we may be able to short
24 circuit this. I think the government's primarily interested
25 here in admitting the contact list in these two exhibits. And

N8UBPER2

Gutierrez - Direct

1 if you could bear with us for a few moments, your Honor, I
2 would be happy to redact the messages if that satisfies defense
3 counsel.

4 MS. BAHARANYI: That would be fine for us.

5 THE COURT: Okay. Great. Anything else?

6 MS. BAHARANYI: Not on our part.

7 THE COURT: Let's bring in the jury.

8 MS. NICHOLAS: Your Honor, may we have a moment to
9 redact those exhibits before we admit that?

10 THE COURT: Do that now and tell me when you're ready.

11 (Pause)

12 MS. NICHOLAS: Your Honor, I believe the parties are
13 prepared to proceed.

14 THE COURT: Okay. Let's get the witness, and let's
15 bring in the jury.

16 THE DEPUTY CLERK: Jury entering the courtroom.

17 (Jury present)

18 THE COURT: Please be seated. Please continue.

19 MS. NICHOLAS: Thank you, your Honor. Welcome back.

20 Briefly we're going to set aside the defendant's
21 phone, and I want to turn briefly to Government Exhibit 1003,
22 which again is a stipulation.

23 In that stipulation Government Exhibits 1201 through
24 1210, including all subparts, are true and accurate copies of
25 data extracted from the Latimer iPhone 8.

N8UBPER2

Gutierrez - Direct

per paragraph three, On July 3rd of 2021, law enforcement officers arrested, among other people, Jahmal Latimer, aka, Jahmal Abdullah Bey.

BY MS. NICHOLAS:

Q. I'm going to turn to that manila folder the Redweld there that has a sticker on it that says 1200 series.

Do you see that?

A. Yes.

MS. NICHOLAS: At this time, your Honor, the government offers 1201, 1202A, 1202B, 1202B1, 1202B2, 1202B3, 1202C, 1202D, 1202E, 1202F, 1202I, 1202J, 1204, 1207A, and 1208.

THE COURT: So all the objections made outside the presence of the jury are preserved but overruled and the exhibits are received.

(Government's Exhibits 1201, 1202A, 1202B, 1202B1, 1202B2, 1202B3, 1202C, 1202D, 1202E, 1202F, 1202I, 1202J, 1204, 1207A, and 1208 received in evidence)

BY MS. NICHOLAS:

Q. Mr. Ahuja, if you can please publish what's now in evidence as Government Exhibit 1201. If you could please zoom in on the row begins with Apple ID.

Ms. Gutierrez, if you could just read for us what it says for Apple ID?

A. Latimer, L-A-T-I-M-E-R, 417@gmail.com.

N8UBPER2 Gutierrez - Direct

1 Q. Zooming out, Mr. Ahuja, and zooming back in on last hotspot
2 activity.

3 And, Ms. Gutierrez, if you could read that date stamp
4 please?

5 A. It says July 3, 2021 at 6:53 p.m.

6 Q. Thank you. Mr. Ahuja, we're going to publish what's now in
7 evidence as Government Exhibit 1202A.

8 Ms. Gutierrez, you have a hard copy of these in front
9 of you as well if that's easier to reference.

10 Now, 1202A in general terms, can you describe what
11 1202A?

12 A. It's a Cellebrite report.

13 Q. What type of information does this particular Cellebrite
14 report capture?

15 A. Participants in a group chat.

16 Q. You said a group chat, are you familiar with group chats?

17 A. I am.

18 Q. What's a group chat in plain terms?

19 A. it's hard to describe without calling it a group chat. You
20 can text a bunch of people in one group setting.

21 Q. So going through, Mr. Ahuja, if you could, the first three
22 pages.

23 What type of information is captured in the first
24 three pages of this exhibit?

25 A. Contacts.

N8UBPER2

Gutierrez - Direct

1 Q. Are those the participants in this particular chat?

2 A. Yes.

3 Q. And then after that, Mr. Ahuja, if you could flip through
4 the next three pages.

5 What type of information is contained in those pages?

6 A. They're messages.

7 Q. Before we get into the substance of the message, Mr. Ahuja,
8 if you could go back to the previous page.

9 Ms. Gutierrez, if you could orient the jury, how can
10 you tell who's speaking?

11 A. At the top it says from Jahmal Abdullah Bey, owner. That's
12 who's speaking. It's also the owner of a phone on the right in
13 green.

14 Q. Mr. Ahuja if you could zoom in where it says "from" there
15 at the top. That's how you know who sent that message?

16 A. Yes.

17 Q. And then is it same for the blue boxes?

18 A. Yes.

19 Q. You could zoom in there, and zoom back out.

20 And again just to orient without getting into the
21 substance, how can you tell when these messages were sent?

22 A. There's data at the bottom of the message that says the
23 date and time.

24 Q. And, Mr. Ahuja, if you could please zoom in on just below
25 the message where it says source info, that section.

N8UBPER2

Gutierrez - Direct

1 Based on this information, are you able to tell what
2 application these messages were exchanged in?

3 A. Yes.

4 Q. How can you tell?

5 A. It says Telegram data, so it would be from the Telegram
6 messaging app.

7 Q. Mr. Ahuja, let's go back to the first message in this
8 exhibit Government Exhibit 1202A. If you can zoom in on that
9 whole box. Make it a little bit bigger. Thank you.

10 I'm going to ask you to just read through this,
11 Ms. Gutierrez, if you can start just by reading who this
12 message is from?

13 A. It's from Jahmal Abdullah Bey.

14 Q. What's the phone number associated or the Telegram number
15 associated?

16 A. It's 1608832021.

17 Q. And just below that I'm going to have you mean the content
18 of that message beginning with operation?

19 A. Operation Fountainhead.

20 July 3rd through 7th, 2021, Packing List.

21 Firearm, ammunition, 4-30-round magazines, rifle
22 cleaning kit, plate carrier with level III plus SAPIs; IFAK is
23 divide all first aid kit, kevlar, boots, tent, daypack,
24 sleeping bag, Isomat, sleeping pad, hygiene wipes and toilet
25 paper, toothbrush, toothpaste, E-tool, small shovel, Woodland

N8UBPER2

Gutierrez - Direct

BDUs, camelback hydration backpack, socks, underwear, BAOFENG, UV, 5R twoway radio, minimum of 320 ounces of potable water, compass, 3.5 days worth of food, fire starters, fire extinguishers, a fire watch list needs to be created. A personnel list needs to be created. FIAT will need to be collected for gas.

What we need volunteers for: Two drivers, two RSOs, range safety officer, designated medic and cooks.

Q. Mr. Ahuja, if you could zoom out and go to the next page, and I want to zoom in on that blue message at the bottom.

Here I just want to have you read beginning below Salaam. It starts with East Coast, if you could read from there?

A. East Coast operation Fountainhead; training dates July 3rd through July 7. Checklist provided, meeting point NAHIGANSETT territory, C.O.O, Commander of operation, BRATHA, Talib, Jamhal.

Q. We can stop right there. Can you read the time and date stamp for this message?

A. 6/22/2021 at 9:08 p.m.

Q. Mr. Ahuja, if you can zoom out and go to the next page please.

Ms. Gutierrez, does this look familiar?

A. Yes.

Q. What does this appear to be?

N8UBPER2

Gutierrez - Direct

1 A. The same message I read previously with the packing list.

2 Q. And what's the date and time on this message?

3 A. June 28, 2021 at 7:13 a.m.

4 Q. Mr. Ahuja, you can pull this one down. I'd like now to go
5 to what's in evidence as Government Exhibit 1202B.

6 Before we talk about the content of 1202B, have you
7 reviewed 1202B?

8 A. Yes.

9 Q. Mr. Ahuja, if you could flip through the first three pages
10 of 1202B.

11 Were you able to compare 1202A to 1202B as well as the
12 rest of the 1202 series?

13 A. Yes.

14 Q. What did you notice?

15 A. It's the same group chat, but with different contact names.

16 Q. Well, let's back up. Going back to 1202A for a moment,
17 halfway down the slide, Mr. Ahuja.

18 Do you see where it says owner. Per the stipulation,
19 1202A comes from Latimer's phone.

20 Mr. Ahuja, then if we could go to 1202B, halfway down
21 if you could zoom there. Listing Jahmal Abdullah Bey as in the
22 stipulation as the owner of this phone. Is 1202B a
23 continuation of 1202A?

24 A. Yes.

25 Q. Going back to the chat. Mr. Ahuja, if you could please go

N8UBPER2 Gutierrez - Direct

1 to the first set of messages in this chat.

2 Ms. Gutierrez, are those large enough for you to be
3 able to read?

4 A. Yes.

5 Q. Who sent each of these messages?

6 A. The owner of the phone.

7 Q. Can I have you read that first message, and then we'll stop
8 for a second.

9 So the time and date stamp on that first message?

10 A. June 12, 2021 at 9:41 a.m.

11 Q. If you could read that message.

12 A. The mission of the marine corps rifle squad is to locate,
13 close with and destroy the enemy by fire and maneuver or to
14 repel the enemies assault by fire and close combat.

15 Q. The next two messages, what do those contain?

16 A. They're links.

17 Q. Can you tell to what webpage?

18 A. It is to Wikipedia for a page called Fire and Movement.

19 Q. Mr. Ahuja, you can go to what's marked as page seven of
20 this document. If you can make the top set of messages just a
21 little larger so they're easier to read.

22 Ms. Gutierrez, if you could again clarify who's
23 sending these three messages?

24 A. The owner of the phone.

25 Q. And who is that?

N8UBPER2 Gutierrez - Direct

1 A. Jahmal Abdullah Bey.

2 Q. Can you read the two text messages?

3 A. We could have five platoons with the same amount of people
4 in this group. That's damn near a company. A company is a
5 military unit typically consisting of 80 to 250 soldiers and
6 usually commanded by a major or a captain.

7 Most companies are formed of three to six platoons,
8 although the exact number may vary by country, unit, type and
9 structure.

10 Q. What's in the message sent at 10:01 a.m.?

11 A. I think emoji.

12 Q. What's an emoji?

13 A. Little pictures that you text with.

14 Q. Mr. Ahuja, if you could zoom out and zoom in on the bottom
15 half of the page.

16 What's the name of the individual who responds?

17 A. In the blue?

18 Q. In the first blue box, the message at 10:01:32 a.m., who's
19 that from?

20 A. Quinn.

21 Q. And then the message received at 10:01 a.m.?

22 A. Tariff.

23 Q. And the last name?

24 A. Bey.

25 Q. And then the text sent from Jahmal Abdullah Bey at

N8UBPER2 Gutierrez - Direct

1 10:03:07, what does that say?

2 A. This Could Be Us.

3 Q. And what follows that?

4 A. A link to YouTube.

5 Q. Ms. Gutierrez, did you review this chat before testifying
6 today?

7 A. Yes.

8 Q. And did you have an opportunity to visit that link?

9 A. I did.

10 Q. Mr. Ahuja, if you could please publish what's in evidence
11 as Government Exhibit 1202B-1.

12 Ms. Gutierrez, what is Government Exhibit 1202B-1?

13 A. It's a screenshot.

14 Q. Are you familiar with the screenshot?

15 A. Yes.

16 Q. Why?

17 A. Because I took it.

18 Q. Where did the screenshot come from?

19 A. The screenshot of the page that appears when you type in
20 that link from the messages that we just talked about.

21 Q. So you visited the link in the message, it directed you to
22 this page?

23 A. Yes.

24 Q. Can you read the title of the video?

25 A. U.S. marines military tactics, fire and movement.

N8UBPER2

Gutierrez - Direct

1 Q. Mr. Ahuja, if we could go back to Government Exhibit 1202B.
2 I'm going to move to page ten of this document.

3 Ms. Gutierrez, as this conversation continues, are
4 there additional links that are sent?

5 A. There are.

6 Q. Mr. Ahuja, if you can zoom in on the bottom half, the green
7 messages, those three.

8 Did you have a chance to review these links before
9 testifying today?

10 A. Yes.

11 Q. The first link, what time was that message sent?

12 A. 7:04 p.m. on June 12, 2021.

13 Q. Mr. Ahuja, could you please publish what's in evidence as
14 Government Exhibit 1202B-2.

15 Ms. Gutierrez, do you recognize this?

16 A. I do.

17 Q. What is this?

18 A. It's a screenshot of the webpage that -- the link that we
19 just discussed brings you to when you type it into Google.

20 Q. Mr. Ahuja, could you please return to Government Exhibit
21 1202B, and right back to where we were on page ten.

22 Did you also have an opportunity to visit the link at
23 the bottom of the screen?

24 A. I did.

25 Q. That was sent at 7:08:05 p.m.?

N8UBPER2

Gutierrez - Direct

1 A. Yes.

2 Q. Mr. Ahuja, could you please publish what's in evidence as
3 Government Exhibit 1202B-3.

4 Ms. Gutierrez, do you recognize this?

5 A. I do.

6 Q. What's the name of the website in the top left-hand corner?

7 A. Army property.com store.

8 Q. What's shown in the slide?

9 What's the header in the slide?

10 A. Do you mean the M23?

11 Q. If you can begin reading at M23.

12 A. M23 blank firing adapter BFA, yellow, NSN, 1005-01-361-8208
13 for M4/M4A1 rifle.

14 Q. Do you see where it says product description?

15 A. Yes.

16 Q. Can you begin reading where it says fits over?

17 A. Fits over the muzzle of the weapon and capture gas to make
18 the weapon function and cycle with blank ammunition. Easy to
19 install and does not alter the weapon.

20 Q. Mr. Ahuja, if we could return to 1202B, go to page 11.

21 If you could, Mr. Ahuja, if you could just zoom in on
22 those top two green messages. Make them a bit easier to read

23 Ms. Gutierrez, can you read those two messages sent by
24 Jahmal Abdullah Bey?

25 A. If any Moors would like to coordinate to order blanks and

N8UBPER2

Gutierrez - Direct

1 the blank firing adapter for your training event in July that
2 would be great.

3 Q. And the next message?

4 A. With those we can practice firing and maneuvering against
5 each other, practice ambushes, assault fighting positions, etc.

6 Q. Zoom out. And, Mr. Ahuja, just zooming in on the last
7 message on that screen.

8 The message received at 8:10:55 p.m. on 6/12/2021, Ms.
9 Gutierrez, could you please read that.

10 A. We may need more than 1,000 blanks though.

11 Q. Mr. Ahuja, if you could zoom out. We're next going to move
12 to Government Exhibit 1202C, which per the stipulation is still
13 from the Latimer phone.

14 Ms. Gutierrez, is this a continuation of the same
15 group chat?

16 A. Yes.

17 Q. Mr. Ahuja, if we could go to page four, please, and just
18 zoom in on the whole top half of the screen.

19 Before we read the content, I just want to clarify
20 who's participating in this conversation. So that blue message
21 on the left side of the screen, who is that from?

22 A. Jamil Rasul Bey.

23 Q. Can you read the phone number associated with that name?

24 A. 1586131769.

25 Q. And the green message?

N8UBPER2

Gutierrez - Direct

1 A. Is from Jahmal Abdullah Bey, and the number is 1608832021.

2 Q. If you could please read that blue message?

3 A. Lucha has been abducted on "weapon charges" not sure what
4 was the PC on why they even stopped him.

5 Q. And then down to the message sent at 6:58:23 a.m., who's
6 that from?

7 A. It's from Jahmal Abdullah Bey.

8 Q. What does that message say?

9 A. There's an PDF attachment.

10 Q. And then the next message?

11 A. When is his date? Is he held without bail? How much is
12 the bail.

13 Q. Mr. Ahuja, if you could pull that off and move to 1202D,
14 page four, please.

15 Ms. Gutierrez, this is a continuation of the same
16 group chat?

17 A. Yes.

18 Q. And again, before we get into content, these four blue
19 messages, who were those sent by?

20 Mr. Ahuja, if you could zoom in on the "from."

21 A. The contact name is AJ.

22 Q. And the phone number?

23 A. 910443941.

24 Q. Who were those sent to?

25 A. Jahmal Abdullah Bey.

N8UBPER2

Gutierrez - Direct

1 Q. If you could read the blue. I will read the green
2 beginning with the message on June 24, 2021 at 9:49:09 a.m.

3 A. "We are currently waiting for him to let us know. They're
4 trying to hit him with weapons charges though and appreciate
5 it. Of course the pigs won't tell us what he was arrested for.

6 Q. "Of course not. War is deception.

7 A. "Facts. We will keep you updated as soon as we get some
8 more info."

9 Q. Mr. Ahuja, you can pull that down.

10 Mr. Ahuja, if you want to pull up 1202E, moving to
11 page four. Again on the right the owner of the phone is listed
12 as who?

13 A. On the right it's Jahmal Abdullah Bey.

14 Q. The first two blue messages here, who are those from.

15 A. Jamil Rasul Bey.

16 Q. And the phone number?

17 A. 1586131769.

18 Q. You can pull that down. Going to the next page, Mr. Ahuja.

19 The first message, who's that from?

20 A. Jahmal Abdullah Bey.

21 Q. And what does that message read?

22 A. Y'all need to be in RI. It's less of a threat.

23 Q. You can zoom back out, and zoom in on the response, the
24 last two in the blue.

25 Before you read the messages, who's the first one

N8UBPER2 Gutierrez - Direct

1 from?

2 A. Jamil Rasul Bey.

3 Q. Can you read that message?

4 A. Salaam. GS. You are right. By September I would be out
5 there.

6 Q. You can pull that down, please.

7 Mr. Ahuja, if you can publish what's in evidence as
8 1202J, and go to page four, please.

9 Who's this message from?

10 A. Jahmal Abdullah Bey.

11 Q. Can you just read the message, please?

12 A. How far is that from Brooklyn or the Bronx. We have Moors
13 in both areas.

14 Q. Pull that down.

15 MS. NICHOLAS: Your Honor, may I have one moment?

16 THE COURT: Yes.

17 Q. Mr. Ahuja, if you could publish what's in evidence as
18 Government Exhibit 1208.

19 Ms. Gutierrez, what are we looking at in 1208?

20 A. It's a Cellebrite report.

21 Q. And just above the information there's a header that says
22 notes. What does that mean?

23 A. It comes from a notes app.

24 Q. Let's begin by talking about when this was created.

25 Mr. Ahuja, if you could please zoom in on the

N8UBPER2 Gutierrez - Direct

1 information in the column labeled time.

2 When was that note created?

3 A. June 22, 2021, at 2:39 p.m.

4 Q. You can zoom back out, please. And zoom in on the notes
5 column. What's the title of this note?

6 A. Operation Fountain Head.

7 Q. After summary, what does it say?

8 A. Plan of execution.

9 Q. After source?

10 A. Notes.

11 Q. And then beginning where it says, "body," if you could just
12 read that first line?

13 A. Operation Fountain Head, 7/3 to 7/7.

14 Q. And then I'm going to have you read the section beginning
15 with plan of execution, and ending with 2345 hours.

16 A. Plan of execution.

17 Gear check, noon on Friday at the field, load vehicles
18 at 1500 hours, stage vehicles between 1530 and 1630, establish
19 drivers and A-drivers, go over safety brief for if we are
20 pulled over. Leave at 2345 hours.

21 (Continued on next page)

N8UAAPER3

Gutierrez - Direct

1 BY MS. NICHOLAS:

2 Q. Then the next section, we'll start at upon arrival and end
3 at --

4 A. Upon arrival ETA 5:45 hours, establish birthing area,
5 establish designated hygiene area, establish designated head
6 area, unload the vehicles, camouflage the vehicles and burning
7 area, establish chain of command, establish two-man fire wash
8 list, establish designated cooks, establish a range safety
9 officer and establish armor.

10 Q. The next section beginning with "safety briefs" and ending
11 with "hospital".

12 A. Safety brief, weapon safety rule, pick a battle buddy and
13 stay with them at all times, establish a designated person who
14 in the case of emergency will take the injured person to a
15 hospital.

16 MS. NICHOLAS: Pull that down.

17 (Pause)

18 Q. Ms. Gutierrez, a few moments ago we talked about Government
19 Exhibits 1202B1, B2 and B3. Do you see those in front of you?

20 A. Yes.

21 Q. Were those screen shots of what pages you personally
22 visited?

23 A. Of the --

24 Q. Take a look the 1202B1, B2 and B3.

25 A. Yes. Yes.

N8UAAPER3

Gutierrez - Direct

1 Q. Did the links from those web pages come from the chat
2 messages that you reviewed?

3 A. They did.

4 Q. Did you personally create those screen shots?

5 A. I did.

6 Q. Setting aside those 100 series, I want move to the folder
7 that has 1300 series on it. Do you see that?

8 A. Yes.

9 Q. Returning to the stipulation briefly that's Government
10 Exhibit 1003. In Paragraph Three, on or about July 3 of 2021
11 law enforcement officers arrested, among other people, Quinn
12 Cumberlander, a/k/a "Quinn Khabir". On page two, Paragraph
13 Seven, Government Exhibits 1301, 1304 including all subparts
14 are true and accurate copies of data extracted from the
15 Cumberlander phone.

16 MS. NICHOLAS: Turning now to 1302A already in
17 evidence -- If I can please publish Government Exhibit 1302A.

18 (Pause)

19 Q. Did you have an opportunity to review this report? And
20 again, you do have the hard copies if you want to take a closer
21 look?

22 A. I did.

23 MS. NICHOLAS: Your Honor, apologies.

24 Pull this down.

25 The government offers 1301, 1302A, 1303A, 1303B and

N8UAAPER3

Gutierrez - Direct

1 1303C.

2 THE COURT: Yes, subject to the previous rulings on
3 the objections, those are received.

4 (Government's Exhibits 1301, 1302A, 1303A, 1303B and
5 1303C received in evidence)

6 MS. NICHOLAS: Go back to 1302A.

7 Q. A moment ago you testified that you had a chance to review
8 this particular government exhibit.

9 A. Yes.

10 MS. NICHOLAS: Could you place this side by side with
11 what's in evidence as Government Exhibit 1202A.

12 (Pause)

13 Q. Did you have an opportunity to compare these two Government
14 Exhibits 1202A from the Latimer phone and 1302A from the
15 Cumberlander phone?

16 A. Yes.

17 Q. What is your notice?

18 A. They're the same group chat.

19 Q. Did you notice any differences?

20 A. No.

21 Q. Did you notice any differences as to the contacts?

22 A. Oh, sorry. The contacts are named differently but they're
23 the same numbers that are in the group chat.

24 Q. We are going to come back to that in a moment.

25 MS. NICHOLAS: If you could please publish what's in

N8UAAPER3

Gutierrez - Direct

1 evidence as Government Exhibit 1303C.

2 (Pause)

3 MS. NICHOLAS: If you could begin by zooming in on the
4 participant section at the top of this report.

5 Q. Ms. Gutierrez, if you could read who is participating in
6 this chat?

7 A. AJ Moore and BROX and Quinn Khabir El.

8 MS. NICHOLAS: If you could zoom out and then zoom-in
9 on the messages please.

10 Q. The first blue message, can you read who it's from?

11 A. AJ.

12 Q. Read the whole line please beginning with "nine"?

13 A. 910443941 and it's AJ Moore BROX.

14 Q. What's the time and date that message is received?

15 A. June 29, 2021.

16 Q. And the time?

17 A. 12:26 a.m.

18 Q. Can you read the whole thing please?

19 A. 6292021, 12:26:31 a.m. UPC minus four.

20 Q. What does that message say?

21 A. Yo, downward signal.

22 Q. The next message?

23 A. Salam.

24 Q. The message that follows?

25 A. More private.

N8UAAPER3

Gutierrez - Direct

1 MS. NICHOLAS: If you could please pull up Government
2 Exhibit 1303A.

3 (Pause)

4 Q. Before we get into the messages focusing on the participant
5 section just read the names of two people participating in this
6 chat?

7 A. AJ Moore BROX and Quinn Khabir El.

8 MS. NICHOLAS: Okay. Going to page three of this
9 chat, like start with the first green message and highlight
10 that whole section of the page.

11 (Pause)

12 Q. I would like you to read the green messages from Quinn
13 Khabir El and I will read the blue from AJ Moor BROX, the
14 firsts message at 11:13:23 a.m.?

15 "A. Lucha?

16 "Q. Yeah, they abducted him, bro.

17 "A. WTF.

18 MS. NICHOLAS: You can pull that one down.

19 (Pause)

20 Q. I'm going to ask you to set that set of documents to the
21 side. I want to have you find the folder that's labeled "1400
22 series".

23 (Pause)

24 Q. Did you find that?

25 A. Yes.

N8UAAPER3

Gutierrez - Direct

1 Q. Returning briefly to stipulation which is Government
2 Exhibit 1003 in Paragraph 3 on or about July 3rd, 2021 law
3 enforcement officers arrested, among other people, Aaron Lamont
4 Johnson, a/k/a?

5 A. Tarrif Bey. On page two, Paragraph 8 Government Exhibits
6 1401, 1403, including all subparts true and accurate copies of
7 data extracted from the Johnson phone.

8 MS. NICHOLAS: You can pull that down.

9 At this time, your Honor, the government offers
10 Government Exhibit 1402A.

11 THE COURT: Subject to the previous rulings, received.

12 (Government's Exhibit 1402A received in evidence)

13 Q. Did you have an opportunity to review this Cellebrite
14 report?

15 A. I did.

16 MS. NICHOLAS: Can you place this side by side with
17 Government Exhibit 1302A.

18 (Pause)

19 Q. A moment ago you testified that 1202A and 1302A were from
20 the same group chat. Did you also have the opportunity to
21 compare 1302A and 1402A?

22 A. Yes.

23 Q. What did you notice?

24 A. Again, it's the same group chat but with different contact
25 names.

N8UAAPER3

Gutierrez - Direct

1 MS. NICHOLAS: So, I want to go back to comparing
2 1202A and 1302A and then we'll bring back 1402A. So, if we can
3 to start by displace 1202A and 1302A on the right.

4 (Pause)

5 MS. NICHOLAS: In 1202A if you could please highlight
6 the phone number that ends in 1769 it may help to zoom-in on
7 this particular number as well on the first page please.

8 (Pause)

9 Q. How is 1769 can you read the full phone number the name
10 please?

11 A. 1586131769.

12 Q. And the name?

13 A. Jamil Rasul Bey.

14 MS. NICHOLAS: Zoom back out. Turning to 1302 A page
15 two, the number ending in 1769.

16 (Pause)

17 Q. Is that the same number where you just write in 1202A?

18 A. Yes.

19 Q. 1202A was saved as Jamil Rasul Bay. Can you read how it is
20 saved in 1302A?

21 A. Jamil BROX Moor.

22 MS. NICHOLAS: Like to move 1302A to the left and
23 place 1302A on the right. Stick with that same phone number
24 for a moment.

25 (Pause)

N8UAAPER3

Gutierrez - Direct

1 MS. NICHOLAS: Sticking to that same number ending
2 1769 in 1302A saved as Jamil BROX Moors. In 1402 you could
3 zoom out.

4 Q. Can you read that phone number please?

5 A. 1586131769.

6 Q. How is it saved in the 1402A phone?

7 A. Just "Jamil".

8 MS. NICHOLAS: I want to do the same thing for one
9 other phone number. Going back to 1202A and 1302A.

10 (Pause)

11 Q. On the left side of the screen 1202A is from Jamal Latimer
12 on the right side of the screen is 1302A is from Quinn
13 Cumberlander. Focusing first on 1202A to focus on the phone
14 number ending in 3941, if could you read that number as well as
15 the contact name?

16 A. It's 910443941 and the name is AJ.

17 MS. NICHOLAS: Zoom back out. Same number ending in
18 3941 in Government Exhibit 1302A.

19 (Pause)

20 Q. In this phone belonging to Quinn Cumberlander, how is that
21 number saved?

22 A. AJ Moor BROX.

23 MS. NICHOLAS: Okay. We're going to move 1302A to the
24 left and if you could please pull up 1402A on the right.

25 Q. 1302A on page two, that number ending in 3941 you read as

N8UAAPER3

Gutierrez - Direct

1 AJ Moor BROX. Turning to 1402 A, if you could find the number
2 that ends in 3941? I believe it is a on page two.

3 Is this the same phone number we just looked at in
4 1302?

5 A. Yes.

6 Q. How is it saved in 1402?

7 A. "Alban El".

8 MS. NICHOLAS: Can you pull those down.

9 Your Honor, if I may have a moment?

10 THE COURT: Yes.

11 (Pause)

12 MS. NICHOLAS: Nothing further, your Honor.

13 THE COURT: Cross-examination?

14 CROSS-EXAMINATION

15 BY MS. BAHARANYI:

16 Q. I think it's good afternoon, Ms. Gutierrez?

17 A. Good afternoon.

18 Q. You testified about reviewing certain messages on direct,
19 right?

20 A. Yes.

21 Q. And you testified that you reviewed messages that were
22 provided to you by the prosecutor's office?

23 A. Yes.

24 Q. And in the context specific of the Signal app, you reviewed
25 certain Signal messages that have been provided to you by the

N8UAAPER3

Gutierrez - Direct

1 prosecutor's office?

2 A. Yes.

3 Q. Ms. Gutierrez, you didn't review all the text messages that
4 were sent from the devices you were testifying about today,
5 right?

6 A. I only reviewed what I reviewed. I don't know what else is
7 out there.

8 Q. You didn't analyze the device yourself, right?

9 A. I did not.

10 Q. Or review any other messaging -- actually, withdrawn.

11 So your testimony is today is based off of only what
12 has been provided to you by the prosecutor sitting here?

13 A. Yes.

14 MS. BAHARANYI: One moment.

15 (Pause)

16 MS. BAHARANYI: Nothing further.

17 THE COURT: Anything else?

18 MS. NICHOLAS: No. Thank you, your Honor.

19 THE COURT: Thank you very much. You may step down.
20 Anything else from the government?

21 MS. SMYSER: Your Honor, we just wanted to raise one
22 thing. We believe yesterday we offered Government Exhibit
23 1008, which was a transcript stipulation between the parties.
24 Out of an abundance of caution, we just wanted to make sure
25 that that was received.

N8UAAPER3

Gutierrez - Direct

1 THE COURT: Any objection?

2 MS. BAHARANYI: Your Honor, give us one moment.

3 (Pause)

4 MS. BAHARANYI: No objection, your Honor.

5 THE COURT: Received.

6 (Government's Exhibit 1008 received in evidence)

7 All right. Does the government rest.

8 MS. NICHOLAS: Your Honor, the government rests.

9 THE COURT: All right. Come to the side bar please.

10 (Continued on next page)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

N8UAAPER3

Gutierrez - Direct

(Side bar)

THE COURT: Okay. Any motions from the defense?

MS. BAHARANYI: Yes. Two, your Honor. So at this time we would move for a mistrial. This is based off of the volume of evidence from the Massachusetts incident that has been admitted, has been discussed, evidence that we did move to limit, move to exclude in our motions in limine. And the reason being that at this point we believe the evidence that the guns, the types of guns, the ammunition, the nature of this interaction on the street with Trooper Casey, the nature of the types of ammunition that were recovered from the vehicles in this incident have certainly led to, could certainly lead the jury to convict -- based on this other incident in another jurisdiction, which we believe the government still hasn't sufficiently tied or shown to be relevant to the charges at issue here.

We were always concerned about the potential or mini trial within a trial and I think as the Court has seen from the two hours of testimony today that's largely exclusively focused on the Massachusetts conduct and the hours of testimony yesterday this has in fact evolved in exactly what we feared, that we're taking up the Massachusetts case. It's a Massachusetts incident that has minimal relevance to the 922 (a)(3) charge and conspiracy charge here and is certainly in danger of misleading the jury to convict on that basis instead

N8UAAPER3

Gutierrez - Direct

1 of evidence for instead of for the 922 (a)(3) charge that he is
2 charged with.

3 THE COURT: Okay. That motion is denied. I think
4 we've really covered this in previous colloquies. But to my
5 mind the Massachusetts evidence is clearly and highly relevant
6 to the conspiracy charge in this case and I see nothing in the
7 way it's been presented that would prejudice the defendant
8 other than in the way that is not prejudiced, which is to show
9 that he conspired to commit the conspiracy that's charged here.

10 Now you had a second motion.

11 MS. BAHARANYI: We do, your Honor. At this time we
12 would move under Rule 29 for a judgment of acquittal even
13 viewing the evidence in the light most favorable to the
14 government, we don't believe a reasonable jury would convict on
15 the facts as presented.

16 THE COURT: That motion is denied as well.

17 Now, is Ms. Otero here?

18 MS. BAHARANYI: She is.

19 THE COURT: Okay. So we need to get her in now. I
20 will inquire more formally of the defendant after we excuse the
21 jury, but tell me now whether he is going to take the stand or
22 not?

23 MS. BAHARANYI: "No" is the answer. I do want to
24 still speak with him one more time.

25 THE COURT: Yes. So, we'll give you that opportunity

N8UAAPER3

Gutierrez - Direct

1 but let's get Ms. Otero on the stand and that's, other than the
2 defendant, that's your only other witness, right?

3 MS. BAHARANYI: That's right.

4 THE COURT: We'll get that done, excuse the jury for
5 lunch, we'll inquire of the defendant and then we'll be ready
6 for summations this afternoon.

7 MS. BAHARANYI: Understood.

8 (Continued on next page)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

N8UAAPER3

Otero - Direct

1 (In Open Court)

2 THE COURT: So, ladies and gentlemen, the defense is
3 not required to call any witnesses. The burden of proof is, as
4 I've told you now several times, remains always with the
5 government. The government has a burden of proving one or both
6 of the charges beyond a reasonable doubt. But the defense is
7 given the opportunity, if they want, to present evidence. They
8 are going to call one witness, who I understand is ready to be
9 called right now.

10 MS. BAHARANYI: That's correct, your Honor. Our
11 paralegal specialist is getting her from the lobby.

12 THE COURT: Very good.

13 MARIA OTERO,

14 called as a witness by the Defendant,

15 having been duly sworn, testified as follows:

16 COURTROOM DEPUTY: Please state your name slowly and
17 spell it for the record.

18 THE WITNESS: My name is Maria Otero, M-a-r-i-a,
19 O-t-e-r-o.

20 DIRECT EXAMINATION

21 BY MS. BAHARANYI:

22 Q. Good afternoon, Ms. Otero.

23 Ms. Otero, please tell us where you live?

24 A. Bronx, New York.

25 Q. What part of the Bronx?

N8UAAPER3

Otero - Direct

1 A. Mosholu Parkway.

2 Q. How long have you lived in the Bronx?

3 A. All my life.

4 Q. Ms. Otero, I want to turn to this case. Do you know the
5 person seated next to my colleague at defense counsel table?

6 A. Yes, I do.

7 Q. What name do you know this person by?

8 A. His mother named him "Steven". He goes by "Lucha". I
9 accept him by "Lucha".

10 Q. And when you say Steven -- Steven Perez, is that right?

11 A. Yes, ma'am.

12 Q. And we'll refer to him as "Lucha" for the rest of this
13 proceeding.

14 How do you know Lucha?

15 A. He's my cousin.

16 Q. How are you and Lucha cousins?

17 A. My grandmother and his great grandma are sisters.

18 Q. What are their names?

19 A. Patricia Vasquez is my grandma and his great grandma is
20 Macelina Baez.

21 Q. Ms. Otero, how long have you known Lucha?

22 A. All his life.

23 Q. And about how many years would that be?

24 A. 33.

25 Q. Do you know where Lucha grew up?

N8UAAPER3

Otero - Direct

1 A. In the Bronx.

2 Q. What part of the Bronx?

3 A. Morrisania section of the Bronx.

4 Q. Can you explain to the jury what section that might be. Is
5 that south Bronx, north Bronx?

6 A. That would be east Bronx.

7 Q. How do you know where Lucha grew up?

8 A. I lived with his grandma.

9 Q. And how does that give you information about where Lucha
10 grew up?

11 A. His mother lived in the next building. We share the same
12 rooftop.

13 Q. Did you spend any time with Lucha when he was a child?

14 A. Yes.

15 Q. Ms. Otero, do you know someone by the name of Keith Vereen?

16 A. Yes, I do.

17 Q. How do you know Keith Vereen?

18 A. He's my cousin.

19 Q. Can you explain how you and Mr. Vereen are related?

20 A. My grandmother and his great grandma are sisters.

21 Q. So is this with Patricia Vasquez?

22 A. Yes, ma'am.

23 Q. How long have you known Keith Vereen?

24 A. All his life.

25 Q. Ms. Otero, do you know if Keith Vereen and Lucha are

N8UAAPER3

Otero - Direct

1 related?

2 A. Yes, I do.

3 Q. And how are they related?

4 A. Their grandmothers are sisters.

5 Q. Can you share with us their grandmothers' names?

6 A. Amina Nunez and Carmen Baez.

7 Q. Do you happen to know where Keith Vereen grew up?

8 A. In the Bronx.

9 Q. What part of the Bronx?

10 A. Courtlandt Avenue, South Bronx.

11 Q. South Bronx. Now, how far away is the part of the Bronx
12 that Keith Vereen grew up from where Lucha grew up?

13 A. A bus ride, maybe 40 minutes, 30 to 40 minutes.

14 Q. Do you know if Keith Vereen and Lucha have ever spent time
15 together?

16 A. I'm pretty sure they did.

17 Q. When you say "pretty sure", is there any occasion you are
18 thinking of?

19 MS. NICHOLAS: Objection.

20 THE COURT: I'll allow it.

21 Q. When you say "pretty sure" is there any occasion that you
22 are thinking of?

23 A. I saw them in a barbecue that I went to. It was a family
24 barbecue.

25 Q. And about how long ago was that?

N8UAAPER3

Otero - Direct

1 A. That was 2018.

2 MS. BAHARANYI: Sarah, can you please show just the
3 witness, Ms. Otero, what's been marked for identification as
4 Defense Exhibit C1.

5 (Pause)

6 Q. Ms. Otero, are you able to see a photograph on your screen?

7 A. Yes, I do.

8 Q. And without going into too much detail, what is this a
9 picture of?

10 A. Family, men.

11 Q. Do you know who is in this picture?

12 A. Yes.

13 Q. Do you recognize Keith Vereen in this picture?

14 MS. NICHOLAS: Objection.

15 THE COURT: Overruled.

16 Q. Do you recognize Keith Vereen in this picture?

17 A. Yes, I do.

18 Q. Do you recognize Lucha El in this picture?

19 A. Yes, I do.

20 Q. Can you describe an article of clothing that Keith Vereen
21 is wearing?

22 MS. NICHOLAS: Objection.

23 Your Honor, this is not in evidence.

24 THE COURT: Excuse me.

25 MS. NICHOLAS: This photograph is not in evidence,

N8UAAPER3

Otero - Direct

1 your Honor.

2 THE COURT: Well, I agree with that.

3 MS. BAHARANYI: Let me back up one step, your Honor.

4 THE COURT: Yes.

5 Q. Is this a fair and accurate representation of both Keith
6 Vereen and Lucha El at a family event that you were describing?

7 A. Yes.

8 MS. BAHARANYI: Your Honor, at this time we would move
9 to admit Defense Exhibit C1.

10 THE COURT: Any objection.

11 MS. NICHOLAS: No objection.

12 THE COURT: Received.

13 (Defendant's Exhibit C1 received in evidence)

14 MS. BAHARANYI: Sarah, can you publish this for the
15 jury.

16 (Pause)

17 Q. Ms. Otero, I want to turn back to this photograph. Can you
18 please describe an article of clothing that Keith Vereen is
19 wearing?

20 A. White T-shirt and back shorts with black sneakers.

21 Q. And can you describe an article of clothing being worn by
22 Lucha in this photograph?

23 A. A red hat, white tank top, blue jeans, white sneakers.

24 Q. Where in the photograph is Keith Vereen located, just
25 moving from left to right? And by that I mean is he the first,

N8UAAPER3

Otero - Direct

1 second, third person?

2 A. He's on the left side next to Lucha's father in between the
3 father and the brother.

4 Q. When you say "in between the father and brother", you are
5 talking about Lucha's father?

6 A. His father and his brother.

7 Q. And where in this photograph is Lucha's father?

8 MS. NICHOLAS: Objection.

9 THE COURT: No. Overruled.

10 Q. Where in the photograph is Lucha's father?

11 A. The far end of the left behind Keith.

12 Q. Where in this photograph is Lucha's brother?

13 A. Right next to Keith.

14 Q. And does that put Keith in the middle of the two?

15 A. Yes.

16 Q. Were you also present at this celebration?

17 A. Yes, I was.

18 Q. And what was the nature of this celebration?

19 MS. NICHOLAS: Objection.

20 THE COURT: Sustained.

21 Q. The individuals in the photograph are these individuals
22 that you're related to?

23 A. Yes.

24 Q. Ms. Otero, how often do these family gatherings take place?

25 MS. NICHOLAS: Objection.

N8UAAPER3

Otero - Cross

1 THE COURT: As phrased, sustained. Although I think
2 there is a possible question that could be put there. I'll put
3 it.

4 Do you have a specific memory of seeing Lucha and
5 Keith Vereen together on any occasion other than the one that
6 we've just looked at?

7 THE WITNESS: No.

8 THE COURT: Okay. Very good.

9 Q. As for this family gatherings, you did see Lucha and Keith
10 Vereen together, right?

11 A. Yes.

12 MS. BAHARANYI: Your Honor, no further questions.

13 THE COURT: Okay. Cross-examination?

14 MS. NICHOLAS: Briefly, your Honor.

15 CROSS-EXAMINATION

16 BY MS. NICHOLAS:

17 Q. Good afternoon, Ms. Otero.

18 A. Good afternoon.

19 Q. Ms. Otero, you weren't with Keith Vereen on September 14th
20 of 2020, were you?

21 A. No.

22 Q. You weren't with Steven Perez on September 14th of 2020,
23 correct?

24 A. No.

25 Q. You weren't with Keith Vereen or Steven Perez on September

N8UAAPER3

Otero - Cross

1 16th of 2020, were you?

2 A. No.

3 Q. You weren't with Keith Vereen and Steven Perez on October
4 3rd of 2020, were you?

5 A. No.

6 Q. Specifically, you weren't with them at three in the
7 morning, right?

8 A. No.

9 Q. You weren't with Keith Vereen and Steven Perez on October
10 4th of 2020, were you?

11 A. No.

12 Q. You weren't with Keith Vereen and Steven Perez on October
13 22nd of 2020, were you?

14 A. No.

15 Q. You weren't with Keith Vereen and Steven Perez on November
16 1st of 2020, were you?

17 A. No.

18 MS. NICHOLAS: Thank you.

19 THE COURT: Anything else?

20 MS. BAHARANYI: No, your Honor.

21 THE COURT: Thank you, so much. You may step down.

22 (Witness excused)

23 THE COURT: All right. Subject to the one matter that
24 we'll take up after the jury goes to lunch, does the defense
25 rest?

N8UAAPER3

Otero - Cross

1 MS. BAHARANYI: We do, your Honor.

2 THE COURT: Okay. Very good.

3 So, ladies and gentlemen, I have one question for you.
4 I'd like to give you till two o'clock for your lunch so I can
5 take up some matters with counsel. But the summations will
6 take as much as but no more than two and a half hours. If we
7 take a 15-minute break midafternoon, that would put us at 4:45
8 rather than 4:30. Is going to 4:45 a problem for anyone?

9 Very good. Okay. Have a good lunch and we'll see you
10 at two o'clock.

11 (Jury not present)

12 THE COURT: Please, be seated.

13 Defense counsel wanted to discuss one last time with
14 her client whether or not he wants to take the stand. So, go
15 ahead.

16 MS. BAHARANYI: Thank you, your Honor.

17 (Pause)

18 MS. BAHARANYI: Thank you for that indulgence, your
19 Honor. At this time -- not at this time. Lucha will not be
20 testifying.

21 THE COURT: Mr. Perez, do you confirm that that is
22 your decision? That your decision is not to testify?

23 THE DEFENDANT: That is my decision, sir, but I would
24 rather go by "Lucha El".

25 THE COURT: I'm sorry. So, Lucha El, is that your

N8UAAPER3

Otero - Cross

1 decision not to testify?

2 THE DEFENDANT: It is.

3 THE COURT: Very good. All right. Now, I will get
4 you -- my law clerk is almost finished, I think, putting in my
5 edits -- my charge. You can look it over before you give your
6 summations.

7 There are three things I want to mention. One is I've
8 decided not to give the aiding and abetting charge that the
9 government requested. I really think the substantive count
10 here doesn't, really has not been argued on an aiding and
11 abetting basis and I think it would be more confusing to the
12 jury than helpful to have the aiding and abetting charge.

13 I should mention that -- Well --

14 Second, I am tentatively of the view not to give the
15 good faith charge but I am willing to hear briefly any further
16 argument. Here is the reason, some of which we discussed last
17 night. To the extent that the good faith charge is based on,
18 and this also applies to the defense's theory of the case which
19 was identical. To the extent that the claim is that the
20 defendant believed that these laws were unconstitutional
21 because he had an unfettered constitutional right to receive an
22 out-of-state gun or whatever, that argument cannot be made and
23 must not be made to the jury. It's precluded by Cheek.

24 To the extent he is arguing that he did not, that he
25 was familiar with the underlying laws but did not for whatever

N8UAAPER3

Otero - Cross

1 reason believe they applied to him or something like that, a
2 mistake of law defense that is precluded by Bryan.

3 So, I'm not sure what's left of the good faith
4 defense. If there is something left I would probably charge it
5 but I'm not sure what is left. So let me hear from defense
6 counsel.

7 MS. BAHARANYI: Your Honor, for this moment we think
8 it's important to call in our expert on this, which is Kendra
9 Hutchinson from our office.

10 THE COURT: Yes, who I had the pleasure of having
11 before me last night. So I'm glad we are getting the world's
12 greatest living expert.

13 MS. HUTCHINSON: Good afternoon. Kendra Hutchinson.
14 I can pass my card afterwards.

15 I understand your Honor's position. You know, we
16 discussed this yesterday about Cheek and Bryan. We're posing a
17 challenge to Bryan's curtailment of this type of defense in
18 light of the change.

19 THE COURT: I think that's a great issue for appeal
20 but of course I am bound by the decision. As it stands, Bryan
21 has never been overruled.

22 MS. HUTCHINSON: I understand that, your Honor, but we
23 would contend that to the extent that we've amended the charge
24 that we requested, I think your Honor probably noted that we
25 amended the good faith request.

N8UAAPER3

Otero - Cross

1 THE COURT: Yeah, but what I received last night --
2 and by the way, I thank both sides for the letters I received
3 at nine o'clock. It was a wonderful evening. My wife and I
4 did a very hot rumba and the Yankees won a game for a change
5 but best of all, of course, was receiving your respective
6 letters.

7 But what you asked for in that letter -- and by the
8 way, these letters have not yet been docketed. Both sides
9 should docket them -- is that Lucha El contends that he
10 believed in good faith that his actions were lawful. That's on
11 your good faith defense request. And then under the theory of
12 defense "Here Lucha El contends that he believed in good faith
13 that his actions were lawful and that negates the willfulness
14 requirement."

15 So, my problem is if you are arguing that he believed
16 in good faith that his actions were lawful because the
17 Constitution overrules in effect of any restrictions that might
18 otherwise have existed, that's precluded by Cheek, that
19 argument. To the extent if you are arguing that he didn't have
20 specific knowledge of this statute and therefore, may have
21 mistaken what the law said such as, for example, that he could
22 have believed an import are or something like that, that kind
23 of defense is precluded by Brian.

24 So, I'm not sure what's left that you can argue
25 because this general language doesn't specify.

N8UAAPER3

Otero - Cross

1 MS. HUTCHINSON: I think what I would turn to then,
2 judge, is the Doyle case that we cited. The Second Circuit
3 case providing that good faith is a defense to willfulness.
4 That good faith is a defense to many specific crimes including
5 intent to fraud and the wire fraud statute, et cetera. And so
6 I think that at a minimum, that would be warranted here. I
7 understand --

8 THE COURT: But the good faith that comes up as you
9 correctly say, for example, very often in fraud cases. But the
10 context there is even though the government says this statement
11 was false I believed it was true and I in good faith believed
12 it was true and therefore, I'm not guilty of fraud. That's the
13 situation. The situation here is to the extent the argument is
14 I believed that any restrictions were unconstitutional or I in
15 good faith believed that the statute didn't apply to me, those
16 are both precluded by the two Supreme Court cases I mentioned.

17 MS. HUTCHINSON: But referring back to the willfulness
18 instruction itself, your Honor, we don't know how your Honor is
19 going to charge it, but this is reading from Bryan which we
20 agree controls at least as to the willful element here. And
21 there does have to be this bad purpose to disobey the law.

22 THE COURT: Let me grab from my law clerk while he is
23 busy putting in my edits. So, I'll tell you what I'm going to
24 charge on willfulness.

25 MS. HUTCHINSON: Thank you, your Honor, very much.

N8UAAPER3

Otero - Cross

1 (Pause)

2 THE COURT: Okay. This is under the third element,
3 substantive count and then it is picked up again as a
4 conspiracy count.

5 The third essential element the government must prove
6 beyond a reasonable doubt is that the defendant in receiving
7 out-of-state firearms into his state of residency, acted
8 knowingly and willfully -- and by the way, I previously defined
9 in the earlier receiving and transporting and all that stuff.
10 "Knowingly" means purposely rather than negligently or
11 accidentally, but the defendant need not be aware of the specific
12 law that his conduct has violated. Willfully means to act with
13 a bad purpose, an evil intent to act unlawfully even if the
14 defendant does not have specific knowledge of the particular
15 law he has violated. That's it. And if I weren't going to
16 insert, if there were a good faith defense, it would be the
17 next paragraph. So that's what I'm going to charge.

18 That I think is exactly what Bryan says. In fact it
19 may be a little bit better for you by using in addition to bad
20 purpose which Bryan uses. I used evil intent straight out of
21 Blackstone. So I think the defense is going to be able to
22 argue to the jury the government hasn't shown that he acted
23 with a bad purpose. The government's failed to show that he
24 acted with evil intent, whatever you want to say in that regard
25 but, not the argument that he believed it was constitutional,

N8UAAPER3

Otero - Cross

1 that he believed in good faith it was within the law, et
2 cetera, et cetera.

3 MS. HUTCHINSON: Judge, we are not in our amended
4 charge for good faith defense, we're not asking for or that his
5 actions comply, were Constitutional any longer. We amended it
6 in response to the Court's concerns and we ask that the Court
7 charge, a person does not act willfully if it believes good
8 faith that he is acting within the law or that his actions
9 comply with the law. So we're not referencing the
10 Constitutionality or any specific legal provisions at all or
11 requiring the government to prove that he knew of a specific.

12 THE COURT: What is the evidence? Other than the
13 arguments that I say, you can't make for reasons discussed many
14 times that the defendant believed in good faith that he was
15 acting within the law, the sole thing that you pointed me to
16 yesterday was that his statement when he was approached in the
17 Massachusetts case about the Constitution, and that's not going
18 to do it for reasons we've already discussed.

19 So what other evidence do you have that he believed
20 what he was doing was lawful?

21 MS. HUTCHINSON: Would my co-counsel like to?

22 MS. BAHARANYI: On the facts I think the full extent
23 the body-worn camera captures his statements that "I didn't do
24 anything wrong". So, in terms of his the evidence that he --

25 THE COURT: But --

N8UAAPER3

Otero - Cross

1 MS. BAHARANYI: -- was acting in good faith, I think
2 that is evidence of that. It is a reflection of his mens rea
3 in that moment. He didn't think he was doing anything wrong.

4 MS. NICHOLAS: -- cites the Constitution in that
5 statement, your Honor. He is snaking that precluded --

6 THE COURT: That is my recollection as well. In clear
7 context in reference to the Constitution.

8 MS. NICHOLAS: Is this case, your Honor, we are
9 sitting right now, your Honor, where the defendant did not
10 testify. The government's position is that the willful
11 instruction captures this. To add to the good faith
12 instruction is going to do nothing but confuse the jury. The
13 willful instruction addresses this concern.

14 THE COURT: Okay. Well, defense has their many
15 excellent arguments but I am going to adhere to not giving a
16 good faith instruction.

17 Now the last question I had which is for the
18 government is you suggested language in your letter. Let me
19 find it. This is towards the bottom of page two of your letter
20 and so that I wouldn't miss it, it's all in both places. "The
21 defendant does not have to himself purchase the firearms out of
22 state but it is enough to prove only that the defendant
23 received or accepted the guns in a state of residence."

24 That part I am going to give almost those exact words
25 slightly different. But then you say "The government will have

N8UAAPER3

Otero - Cross

1 been found to have satisfied this element if he caused an
2 agent, employee or other associate to bring the guns into his
3 state of residence. A defendant who uses another person or
4 person to purchase the guns from out of state through the use
5 of -- statement other ways firearms under the law. I'm not
6 going to give that second sentence, which is more I think in
7 the way of the very last of the sentences, more in the way of
8 summation for you to argue but not for me to state. But in the
9 middle sentence the government will have been found to have
10 satisfied the elements -- into the state of residence. Is that
11 a necessary element?

12 MS. BAHARANYI: Your Honor?

13 THE COURT: I am wondering whether the law isn't that
14 if you know the gun was purchased or obtained out of state and
15 then you receive it in your state of residency, that's a
16 different state; isn't that enough?

17 MS. NICHOLAS: I think that that is enough, your
18 Honor. I think --

19 MS. BAHARANYI: Can I interrupt? I'm so sorry, your
20 Honor. Can we excuse Lucha?

21 THE COURT: Yes, absolutely.

22 (Defendant not present)

23 THE COURT: Go ahead.

24 MS. NICHOLAS: To the extent the phrase "otherwise
25 obtained" needs to be defined, that's kind of the genesis of

N8UAAPER3

Otero - Cross

1 the government's proposal here but the government is fine --

2 THE COURT: I'm going to leave it the way I understand
3 the law to be which is that if you know it's coming to you from
4 out of state and it's not from the state of your residency,
5 then you violate the law if you receive it.

6 MS. NICHOLAS: Understood.

7 THE COURT: Okay. All right. Very good. I will get
8 you those charges sometime in the next few minutes. Let me
9 give the edits back to my law clerk. And we'll see you at two
10 o'clock. Oh, I'm sorry. And I'll also get you -- although,
11 we'll have time later at the end of the day -- the verdict form
12 because I do want to hear whatever you have to say.

13 MS. NICHOLAS: Your Honor, is it your Honor's
14 preference to send an exhibit list back to the jury? And if
15 so, should we essentially sanitize that exhibit list?

16 THE COURT: Yes. You should prepare. This is because
17 I don't want you to be spending tonight sleeping or anything
18 like that, tonight you need to prepare a joint exhibit list
19 although the government's part will be the larger part. That
20 is basically a sanitized exhibit list, a number and brief
21 description of what it is and we are sending them all the
22 exhibits except instead of the videotapes. We'll send them a
23 laptop and a thumb drive that they could play the videotapes on
24 and even that same thumb drive needs to be the Excel sheet so
25 is that they can access.

N8UAAPER3

Otero - Cross

1 MS. NICHOLAS: Thank you.

2 THE COURT: We're not sending in the guns or
3 ammunition but they will be instructed if they want to see
4 them, they can.

5 MS. NICHOLAS: Thank you.

6 (Luncheon recess)

7 (Continued on next page)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

N8UBPER4

Summation - Ms. Smyser

AFTERNOON SESSION

2:00 p.m.

(Jury not present)

THE COURT: By the way, I assume that the defense counsel at the close of all the evidence renewed the motions, and those motions are deemed renewed and are deemed denied again.

MS. BAHARANYI: Thank you, your Honor, yes.

THE DEPUTY CLERK: Jury entering the courtroom.

(Jury present)

THE COURT: Please be seated. So, ladies and gentlemen, we're about to hear closing arguments of counsel. I want to remind you, as I did before opening statements that nothing that counsel says is evidence. The evidence came from the testimony, from the exhibits, and from the stipulations; but it may be useful before you begin your deliberations to hear what each side believes the evidence shows or fails to show as the case may be.

So this is their opportunity to suggest to you what they think the evidence has proved or failed to prove, and it's because the government bears the burden of proof that the government gets both an opening summation and a rebuttal summation. And in between that, we'll hear from defense counsel, so we'll start with the government's opening summation.

N8UBPER4

Summation - Ms. Smyser

MS. SMYSER: May I proceed, your Honor?

THE COURT: Please.

MS. SMYSER: "I don't need a permit. A permit is a permission." Those are the words of a man who knew he was violating the laws. Laws that he decided did not apply to him, and the evidence shows that he knew exactly what he was doing. Let's listen to the defendant's own words.

(Media played)

(Media stopped)

MS. SMYSER: Those words tell you exactly what you need to know, that this man decided that the legalities and the regulations and the mandates and all of that extra stuff, that extra stuff designed to keep us safe did not apply to him. That is a willful violation of the law.

Members of the jury, I'm now going to walk you through the charges and the evidence in this case. And as I do, I'll show you how it all fits together. And by the time I sit down, you will know beyond a reasonable doubt that the defendant is guilty.

First, we're going to discuss Count Two. In that count the defendant is charged with receiving the Canik or the Yanik 9mm gun that you heard so much about. He received this Canik in his residence in New York, and he did so without a license. After that, we're going to discuss Count One. His agreement with others to transport and receive firearms

N8UBPER4

Summation - Ms. Smyser

1 interstate without a license. And as we walk through each one
2 of these charges, I'm going to talk with you about the evidence
3 that shows you that the defendant knew that he was acting with
4 a bad purpose; that is, that he was acting willfully.

5 So let's start with Count Two, receiving the Canik in
6 New York. We'll discuss each one of the elements of the crime
7 that are on the screen here, that the defendant was not
8 licensed to deal in firearms, that he received the firearm in
9 his state of residence, which had been purchased outside of his
10 state of residence, and that he acted willfully. And as we go
11 through each one of those elements, you'll see that there's
12 actually a lot that's not in dispute.

13 So what do the parties agree on? For starters we
14 agree that the defendant was not a licensed importer, license
15 manufacturer, licensed dealer or licensed collector of
16 firearms -- not now, not ever. And the parties agreed on that
17 in Government Exhibit 1001 which is on your screen. You also
18 saw that in a blue ribbon certification from the ATF, it shows
19 that the defendant never applied for or was issued a license to
20 deal firearms. That's element one. The defendant was not
21 licensed to do this.

22 The next element involves the defendant's state of
23 residence, and here again the parties agree the defendant
24 resides in New York state. The second part of this element
25 involves the defendant receiving the gun, that Canik in his

N8UBPER4

Summation - Ms. Smyser

1 state of residence, New York. There's also no serious dispute
2 here, but I'm going to walk you through this timeline that's on
3 the slide which shows you how you know that the defendant
4 received the Canik in New York.

5 Let's start with September 21, 2020. On that day, the
6 defendant communicated with Vereen, Keith Vereen. Before we
7 discuss the relevance of those communications and others, I
8 first just want to make crystal clear also there's no serious
9 dispute about this that Vereen and the defendant were the users
10 of the two relevant phones. You know that Vereen was using the
11 device ending in 0166, the green device here which you heard
12 about from Mr. Petersohn, because he gave this phone number to
13 Western Union. And you see those records in the upper
14 right-hand corner of the screen.

15 And Mr. Archuleta explained to you that Vereen would
16 have to use his ID and provide his information in order to pick
17 up money transfers from Western Union. In addition, you know
18 that the 0166 number is Keith Anthony Vereen's phone number in
19 Cash App or block records, and those are in the bottom right of
20 your screen, Government Exhibit 801. You also know that the
21 defendant is the user of the Steven Perez device ending in
22 1561. Like Vereen, the defendant gave this number to Western
23 Union when he was sending money to Vereen. And it is also
24 subscribed to him in T-Mobile records which you see in the
25 bottom right side of the screen.

N8UBPER4

Summation - Ms. Smyser

1 The defendant and Vereen talked on September 21st
2 multiple times. This was a little over a week before Keith
3 Vereen purchased that Canik in South Carolina. You saw
4 evidence of these communications in the call records or CDRs
5 that Mr. Petersohn discussed and which are shown on the screen
6 here. These CDRs and the cell site analysis are contained in
7 Government Exhibit 901. The calls from September 21st were
8 about Vereen buying a gun for the defendant. And how do you
9 know? Because the day after the defendant repeatedly talks to
10 Vereen on the phone, he sends Vereen money.

11 Members of the jury, you also know that the defendant
12 and Vereen are relatives, but that's not all they are. They
13 are co-conspirators. They are men working together to
14 transport and receive firearms. Now, on September 22, the
15 defendant sent \$350 to Vereen from a check cashing store in the
16 Bronx. Vereen picked up this money at a store in South
17 Carolina, which you can see in the Western Union records. That
18 money was for a gun. You know this because a week later Vereen
19 went out and bought the Canik as well as other guns.

20 On October 1, 2020, Vereen walked into an FFL Dicks
21 Pawn Shop West in South Carolina. You see that on the
22 right-hand side of the screen. He filled out an ATF 4473 form
23 that shows that he was purchasing the 9mm Canik with serial
24 number 20CB25810. He was purchasing this gun, this gun which
25 he then delivered to the defendant in New York. When Vereen

N8UBPER4

Summation - Ms. Smyser

1 bought this gun, he lied for the defendant. As you can see in
2 the bottom box, Vereen attested under penalty of perjury that
3 he was not purchasing the firearm on behalf of another person.
4 He did this despite the bold warning on the bottom of the form
5 that says very simply that he could not purchase this on behalf
6 of someone else, someone like the defendant.

7 I want to pause for just a moment on Keith Vereen.
8 Vereen, like the defendant, did not have a license to deal in
9 firearms, and this is shown in the ATF blue ribbon
10 certification on the screen. Yet, the defendant chose Vereen
11 who lived hundreds of miles away to buy him a gun and to bring
12 it to New York. So Vereen lied and bought that gun on October
13 1st. When did the defendant get it? Just two days later on
14 October 3rd. You saw this with Mr. Petersohn. Mr. Petersohn
15 showed you that on October 2nd and October 3rd, Vereen traveled
16 from South Carolina where he lived and where he had bought that
17 gun up to New York. He got there late, sometime before 2:12
18 a.m. as indicated in the box in the upper right-hand side of
19 the screen.

20 After Vereen got to New York, he went to the Bronx,
21 and he didn't go just anywhere in the Bronx. He went to see
22 the defendant. You see this in the cell site records and in
23 the call logs. First starting at 2:31 a.m. right after he gets
24 to New York, Vereen called the defendant. Indeed he called the
25 defendant multiple times. And then around 3 a.m., the two

N8UBPER4

Summation - Ms. Smyser

connected to the same cell site. Why? They were meeting.

They were exchanging guns and money at 3 a.m.

On October 6 Vereen is back in South Carolina. As we'll discuss later, this happens over and over again. Vereen buys guns. He travels to New York. He calls the defendant. He meets with the defendant, and they exchange guns and money. It's no secret what is happening here. Each time Vereen was buying guns in South Carolina and delivering them to the defendant in New York. Everything we've talked about so far is sufficient to show you the defendant received the Canik in New York.

But this is not the only evidence you have. You have the fact that the defendant was arrested in the Bronx in June of 2021 with that gun. This was the stop with Officer Smalls. Officer Smalls was responding to a 911 call reporting that a man had a firearm in the area of East Gun Hill Road and Perry Avenue in the Bronx. The radio transmission reported that the man was Hispanic, 5'6, wearing a white T-shirt, black pants, a blue purse, a black and white turban and that he went by the name Lucha. And when Officer Smalls responded, he saw the defendant just as you see on the screen here.

Officer Smalls looked inside the defendant's bag and he found the defendant's gun, the Canik, the gun that the defendant had paid Vereen to purchase in South Carolina and that the defendant got from Vereen on a trip to New York. So

N8UBPER4

Summation - Ms. Smyser

1 the defendant has not only clearly committed the first element
2 of this crime, but also the second. He received in New York
3 his state of residence a Canik which Vereen had purchased out
4 of state.

5 The third and final element here is that the defendant
6 acted willfully, and I want to talk just a little bit about
7 willfulness. Before I do, you should know that Judge Rakoff's
8 instructions of the law govern. If I or any lawyer says
9 anything that is inconsistent with those instructions, you
10 should follow them. But I expect that Judge Rakoff will
11 instruct you that willfulness does not require that the
12 defendant knew what specific law he was violating. Instead, he
13 just needs to know that he was acting with a bad purpose. And
14 although this seems to be the main dispute at this trial, it's
15 actually not a close call. The evidence proves beyond a
16 reasonable doubt that the defendant was acting willfully, that
17 he acted with a bad purpose.

18 And I'm now going to walk you through the three ways
19 you know that the defendant was acting willfully. First, the
20 defendant used a straw purchaser in South Carolina. Why did he
21 do that? Because he wanted guns in New York, but he had a
22 problem. He didn't have a permit to purchase his own guns in
23 New York. You can see that this is yet another point on which
24 the parties agree, that's Government Exhibit 1006, that the
25 defendant has never been granted a firearms license. The

N8UBPER4

Summation - Ms. Smyser

1 defendant's lack of a firearms permit is why he didn't just
2 walk into a gun store in the Bronx and buy a gun himself. It's
3 why he sought the help of a straw purchaser living 600 miles
4 away to lie at gun stores to buy guns for him. It's why the
5 defendant called Vereen. It's why he paid Vereen, and it's why
6 they met in the middle of the night at 3 a.m.

7 Members of the jury, use your common sense. You don't
8 meet in the middle of the night to get a gun that you think you
9 can have. No. You meet in the middle of the night so that you
10 can get an illegal gun without being detected. You get someone
11 to travel hundreds of miles to see you. That is how badly the
12 defendant wanted guns.

13 The second reason you know that the defendant was
14 acting willfully is how he reacted during his arrest in the
15 Bronx. I want to take a moment to talk about that arrest. As
16 we do, I want you to think about whether this is a man who had
17 no idea he was doing something unlawful. The evidence shows
18 that the answer to that is no. What is the first thing that
19 the defendant does when the officers approach, he tells them
20 not to go in his bag.

21 (Media played)

22 (Media stopped)

23 MS. SMYSER: "Don't go in my bag, brother." The
24 defendant does not want that officer in his bag. Why? Because
25 he knows he's possessing the Canik in New York was illegal and

N8UBPER4

Summation - Ms. Smyser

1 he doesn't want to get arrested. He doesn't say he has an arm
2 until he already knows that Officer Smalls has frisked his bag,
3 and he knows that he's been caught. And what does he do next?
4 He lies about his address.

5 (Media played)

6 (Media stopped)

7 MS. SMYSER: "What's this building I have no idea."
8 Did the defendant actually have no idea what this building was?
9 No. This is the building where he lived, as you can see in his
10 DMV records Government Exhibit 601. He was lying. Why was he
11 lying? He'd been caught, and he knew that he was breaking the
12 law. To be clear, he was not bewildered or confused as to why
13 he was being arrested. He knew exactly why he was being
14 arrested, and this video makes that clear.

15 (Media played)

16 (Media stopped)

17 MS. SMYSER: Officer Smalls found the gun and asked
18 the defendant if he had a permit. The defendant doesn't say,
19 What do you mean. I had no idea I needed one. Where do I get
20 one. What should I do. No. He says I don't need a permit. A
21 permit is a permission, and I'll deal with this in court.

22 Now this is not an instance where the defendant just
23 didn't know the laws surrounding how you get guns.

24 (Media played)

25 (Media stopped)

N8UBPER4

Summation - Ms. Smyser

1 MS. SMYSER: "I'm not worried about a permission. A
2 permit is a permission." This is a man who knows about the laws
3 and has decided that they do not apply to him. That is a
4 willful disregard of the law. And I know you've seen this clip
5 already, but I want to watch it again because it shows a man
6 who knows exactly what he was doing.

7 (Media played)

8 (Media stopped)

9 MS. SMYSER: The defendant here tells the officers
10 that they should learn. They should learn not to uphold the
11 legalities and regulations and mandates and all of that extra
12 stuff. He's not confused as to why he's being arrested. He's
13 not trying to comply with the law. No. He's disregarding it
14 and telling the officers to do the same. That is acting with a
15 bad purpose.

16 Third and finally, you know that the defendant knew he
17 was doing something wrong because after he was arrested in the
18 Bronx, he doubled down. He was told he needed a permit. His
19 gun was taken away, but he did not stop and think twice. He
20 did not go out and try to get a gun permit. He did not try to
21 do the right thing. Instead, just two weeks later he packed up
22 his guns in the Bronx and he headed to Rhode Island with them
23 to meet his friends, the Rhode Island residents, and they
24 headed to Massachusetts. And it was there that he was arrested
25 with his friends and with the guns.

N8UBPER4

Summation - Ms. Smyser

1 We will talk a little bit about the details of that
2 arrest later, but for now it shows that all along the defendant
3 knew that he had been acting with a bad purpose. These three
4 reasons: That the defendant used a straw purchaser; his
5 reaction to the Bronx arrest; and the fact that he was arrested
6 in Massachusetts just two weeks later show you that the
7 defendant was not trying to lawfully get guns. Instead, he was
8 choosing not to follow a law because he did not like it. But
9 as Americans, we all have to live by the same laws, even if we
10 don't agree with some of them. You don't get to decide which
11 laws apply to you.

12 So as we've discussed, the defendant was not a license
13 firearms dealer. He received a firearm in New York that was
14 purchased outside of his state of residence, and he did so
15 willfully. That is why the defendant is guilty of Count Two.

16 Now that you know that the defendant is guilty of
17 Count Two, I want to talk about Count One which is the
18 conspiracy charge. As I expect Judge Rakoff will tell you, a
19 conspiracy is just an agreement, and here you know that the
20 defendant agreed to violate Section 922(a)(3) for the reasons
21 we've already walked through and more. Let's focus on the
22 evidence that we've already seen. We've already talked about
23 the fact that the defendant got the Canik from Vereen in New
24 York and that he did so willfully.

25 His relationship with Vereen is sufficient in and of

N8UBPER4

Summation - Ms. Smyser

1 itself to convict on Count One. The defendant agreed with
2 Vereen at minimum to transport and receive firearms from out of
3 state, but there is more to the defendant's conspiracy than
4 that. You know, for example, that Vereen bought many more guns
5 than just the Canik, at least 24 guns in total to be exact. You
6 can see that in Government's Exhibit 902. Many of those
7 purchases took place right before Vereen traveled to New York
8 and met with the defendant. You can see that in the
9 highlighted rows on the screen.

10 But it's not just the defendant, these trips also took
11 place after the defendant's friends Jamil Bey and Ricardo
12 Rodriguez paid Vereen for guns. Bey and Rodriguez are the
13 defendant's co-conspirators too. They were paying Vereen for
14 guns that Vereen delivered to the Bronx. Let's focus on Bey
15 for a moment. Bey paid Vereen on September 12th. He did not
16 have a gun license, as you can see in the bottom right-hand
17 side of the screen, and he lives in the Bronx. His DMV and
18 Western Union records show that his address was 2759 Webster,
19 but his cell phone records also show a connection to 236 East
20 Gun Hill Road, which is an address that shows up in his DMV
21 history, and it's also an address where his cell phone
22 frequently is.

23 There's no question that the person who sent the money
24 to Vereen is Jamil Rasul Bey, the same Bey who was arrested
25 with the defendant in Massachusetts, which we'll talk about a

N8UBPER4

Summation - Ms. Smyser

1 little bit in the bit. The defendant is the link between Bey
2 and Vereen. The defendant talked to Vereen almost 22 times
3 over this couple of month period and Bey almost 50 times, but
4 Bey and Vereen, they never called each other. The defendant
5 was their go-between. The defendant brought Bey into the
6 conspiracy and communicated on his behalf. He linked Bey and
7 Vereen.

8 Let's talk next about Rodriguez. The defendant is
9 also the link between Rodriguez and Vereen. Like Bey,
10 Rodriguez paid Vereen on September 12, 2020. He's from the
11 Bronx, and he didn't have a license to deal in firearms as you
12 can see here, and again the calls show that the defendant is
13 the link. Rodriguez talked to Vereen just twice on September
14 14 and September 16 when Vereen is in New York after Rodriguez
15 had paid him for a gun. But Rodriguez talked to the defendant
16 all the time, almost 200 times in three months. The defendant
17 was Rodriguez's guy. This all shows that the defendant is the
18 link to Vereen's guns. He brought his friends Bey and
19 Rodriguez into the conspiracy, and he helped them get guns from
20 out of state.

21 Both Bey and Rodriguez like the defendant are
22 residents of New York and didn't have firearm licenses to
23 lawfully get guns from out of state, yet they did it anyway
24 together. In other words, they're in a conspiracy. I want to
25 briefly walk through Vereen's trips which are one of the

N8UBPER4

Summation - Ms. Smyser

1 powerful pieces of evidence of the defendant's conspiracy. As
2 you heard in this trial, Vereen took four trips to New York
3 from September 2020 through November 2020. The first trip is
4 September 14th. The next is October 3rd. The third is October
5 22nd, and finally November 1st. We'll walk through each of
6 these starting with the first.

7 On September 12, Bey and Rodriguez paid Vereen. That
8 day and the next Vereen bought seven guns, and you see those
9 gun purchases here, six guns from three FFLs all in South
10 Carolina. After Vereen bought those guns, he took a trip to
11 New York. He first traveled up to New York. And after a call
12 with Rodriguez and the defendant, he met with the defendant.
13 And two days later, he met with all of them before heading back
14 home, delivering guns, getting paid and going home.

15 Trip two is more of the same. I'm not going to dwell
16 on it since we've already discussed it, but on October 1st and
17 2nd Vereen bought four guns in South Carolina, including the
18 Canik. You can see those purchases here. As I said, he bought
19 four guns plus the Canik. He then traveled and met with all
20 these co-conspirators again. You know that he met with the
21 defendant on October 3rd at 3 a.m., and the next day he's in
22 the same vicinity as the defendant and Bey and Rodriguez
23 delivering guns getting paid, going home. A few weeks later,
24 Vereen and the defendant did it again. Vereen bought guns in
25 South Carolina, three guns to be exact, which you can see here.

N8UBPER4

Summation - Ms. Smyser

1 He then traveled to New York and he met with the defendant.

2 Here he is traveling up, meeting with the defendant,
3 and heading back home less than 12 hours in the Bronx
4 delivering guns, getting paid, heading home. Finally, Vereen
5 did it one more time. He bought two guns in South Carolina.
6 He traveled to New York. Here he is going up, delivering the
7 guns to the defendant, getting paid, going home.

8 Members of the jury, these are Vereen's only trips to
9 New York over that nine month period from September 2020
10 through July 2021. These trips happen only after Vereen
11 purchases guns in South Carolina, talks to the defendant and
12 then meets with the defendant, and sometimes he meets with the
13 defendant's co-conspirators too. This is not a situation where
14 Vereen is just traveling to New York to see his family or his
15 friends or celebrate a holiday. He's coming for quick trips to
16 see the defendant and deliver guns. Sometimes staying for only
17 a few hours.

18 Use your common sense. This is not a coincidence.
19 Again, this is all you need to convict on Count One. You have
20 the defendant. You have Vereen. You have Bey. You have
21 Rodriguez all in conspiracy together, agreeing to purchase guns
22 from outside their state of residence without licenses. But
23 again, that is not all the evidence you have about the
24 conspiracy. You have the Massachusetts arrest. You know that
25 Vereen bought a gun, a Glock on July 23, 2020, which is

N8UBPER4 Summation - Ms. Smyser

1 highlighted here.

2 The defendant and Jamil Bey and others were then
3 arrested on July 3, 2021. This group of men was arrested with
4 the Glock and with many other guns. They were all part of a
5 conspiracy to transport and receive guns from out of state
6 without the proper licenses. How do you know? Let's start
7 with the defendant and with Bey. This is from Government
8 Exhibit 330C, Jamal Latimer's body worn camera. On that camera
9 you see the defendant on the right wearing body armor. The
10 parties have agreed on that, and he is standing right next to
11 Jamil Bey whom he helped get guns from Vereen. Let's watch
12 this.

13 (Media played)

14 (Media stopped)

15 MS. SMYSER: Latimer, the leader asked twice, nothing
16 is stolen, right. Nothing is stolen, right. And Bey says,
17 nah, nah, hell nah. And as Bey is answering, the defendant,
18 who's the man in the upper right-hand corner of the screen is
19 standing next to him shaking his head no confirming that those
20 guns were not stolen.

21 Watch this again and pay careful attention to the
22 defendant's head shake as Latimer ask if the guns are stolen.

23 (Media played)

24 (Media stopped)

25 MS. SMYSER: The defendant knows that these guns

N8UBPER4

Summation - Ms. Smyser

1 aren't stolen. How does he know that? Because he and Bey are
2 the ones who brought the guns from New York to Rhode Island to
3 Massachusetts. They're the ones who are legally supplied the
4 guns for the group, only two weeks after the defendant's arrest
5 for illegally possessing a firearm in the Bronx.

6 Let's step back for a second and talk about this group
7 and who they are and why they wanted guns. First, let's focus
8 on Jamal Latimer. He was the leader and spokesperson for the
9 group that you saw on Trooper Casey's body camera. He was
10 arrested that day as you see here on the screen, and he is a
11 Rhode Island resident, which you see in his DMV records,
12 Government Exhibit 605. He also does not have a license to
13 deal firearms. This is the other individual who's featured in
14 that body worn camera clip which Latimer is asking if the guns
15 are stolen. This individual is sitting in the car when Latimer
16 is asking that question. The defendant is confirming that
17 they're not stolen.

18 This is Aaron Jiminez, Alban El Curragh, he is a New
19 York resident, and he also does not have a license to deal in
20 firearms, and DMV records show that at least one point in time
21 he was the defendant's neighbor and they were living at the
22 same address. One question you might have is why. Why are the
23 defendants and Bey and all these other men agreeing to
24 illegally transport firearms from out of state? Because they
25 are part of a so-called militia who wants to train with their

N8UBPER4

Summation - Ms. Smyser

1 weapons. And that training as Jamil Bey tells the defendant
2 here on the screen starts on July 3rd, 2021, the day they are
3 arrested in Massachusetts. When they are arrested, they are
4 headed to operation Fountain Head which is led by Jamal
5 Latimer, the commander of operations as you see here. Latimer
6 sends a packing list to a group chat with many of the people
7 who were arrested. That packing list has a lot of military
8 equipment on it, but it also has firearms at the very top.

9 Latimer wants to use this equipment to train. You see
10 here he says he wants blanks to practice firing and ambushes
11 and assault fighting positions, etc. Essentially Latimer wants
12 them to be a military unit. We could have five platoons with
13 the amount of people in this group. That's damn near a company
14 he says. And a man named Quinn responds in the bottom
15 right-hand corner of the screen, Quinn is Quinn Cumberlander,
16 one of the people who was arrested. Quinn, like Latimer, is a
17 Rhode Island resident and does not have a license to deal
18 firearms. You see that here on Rhode Island residency in
19 Government Exhibit 606.

20 Now, the defendant is not part of that group chat that
21 we were talking about, but it's very clear that he knows what's
22 going on. This makes sense because his friend Jamil Rasul Bey
23 is in that group chat. You could see that here, as is Aaron
24 Jiminez, his friend and old neighbor. And as you see here on
25 June 21st, Latimer sends out the packing list to the group,

N8UBPER4

Summation - Ms. Smyser

1 which includes a daypack in addition to firearms. That same
2 day just a few hours later Jiminez ask the defendant if the
3 defendant needs a daypack, and the defendant responds that he
4 already has one.

5 You also know that the defendant knew what was going
6 on in this group chat because the next day he is starting to
7 text other people about it. You should come to the three day
8 training. He's texting on Signal, this unsent message. Signal
9 as you heard was an encrypted messaging application which is
10 more private. The text messages and the group chat also show
11 that the defendant is a trusted member of this group. When the
12 defendant was arrested in the Bronx, Jamil Bey informed the
13 group of that arrest. More precisely he said that the
14 defendant had been abducted. The group sprung into action.
15 They offered thoughts, and they asked for updates. And just a
16 few days later Jamal Latimer even sends a text saying countless
17 members of their group, including the defendant included, are
18 in jail. And these repeated arrests of their group members
19 show that they know that they are violating the law and they
20 are just choosing to ignore it.

21 The defendant gets out of jail in time to go to that
22 training on July 3rd. The group had a plan. They would travel
23 from out of state, including the Bronx members, to meet in
24 Rhode Island where Latimer lives, their leader. That's also
25 where another co-conspirator Quinn Cumberlander lived. And

N8UBPER4

Summation - Ms. Smyser

1 from there, they would drive from Massachusetts and other
2 states to Maine. They were going to travel in two cars which
3 were loaded with firearms supplied at least in part from the
4 defendant and Bey who came from New York, and those cars also
5 had a lot of ammunition. Latimer explain this plan to Trooper
6 Casey who comes across the group around 1 a.m. on the 4th of
7 July weekend.

8 (Media played)

9 (Media stopped)

10 MS. SMYSER: They are a militia decked out in AR-15
11 and military fatigues heading to Maine to train. The defendant
12 who was helping to get guns for the group knows what's going
13 on. Which guns is he getting? He's getting these guns.

14 MS. BAHARANYI: Objection, your Honor.

15 THE COURT: Overruled.

16 MS. SMYSER: One of these guns was purchased by
17 Vereen. It is a Glock with serial number AELY222. It's this
18 gun right here purchased by Vereen in South Carolina brought to
19 the defendant in New York. But that is not the only gun that
20 the defendant is tied to during this stop.

21 (Media played)

22 (Media stopped)

23 MS. SMYSER: In this video the defendant is holding
24 what appears to be an AR-15 for Latimer. That is the photo on
25 the left. In that video he also appears to have a firearm

N8UBPER4

Summation - Ms. Smyser

1 strapped across his chest that's sitting on his hip. You see
2 that here in the middle of the screen. Plus there is the gun
3 purchased by Vereen, the defendant's straw purchaser. And
4 these guns are passed around between the group members because
5 they are group guns, guns that this group wanted to transport
6 interstate without a license.

7 Based on all of this evidence, you know that the
8 defendant was in a conspiracy to transport and receive firearms
9 into the state of residence of the ultimate receiver. The
10 Massachusetts arrest as I mentioned earlier also provides
11 strong evidence of this group's willfulness. Why? Remember
12 that this arrest came two weeks after the defendant's arrest,
13 two weeks after the group learned about the defendant's arrest.
14 They had plenty of notice that they were probably doing
15 something unlawful.

16 But on July 3rd when the police calmly asked them to
17 put their guns away, they refused. They refused to put away
18 their guns. They passed around their guns, including to the
19 defendant. They had their guns and their ammunition and their
20 magazines at the ready, specifically they had nine guns,
21 including assault rifles, over a thousand rounds of ammunition
22 and almost 20 magazines. This arsenal shows that they planned
23 this. They needed to transport guns interstate in order to
24 make this happen. The Massachusetts arrest tells you what was
25 in the defendant's mind. It shows you that the defendant knew

N8UBPER4

Summation - Ms. Smyser

1 that he was acting with a bad purpose, just two weeks before
2 he'd been arrested in the Bronx, informed that he needed a
3 permit for the gun.

4 And two weeks later what is he doing, he's not trying
5 to comply with the law. Instead, he's moving guns from New
6 York to Rhode Island, including to residents of that state, and
7 to Massachusetts and they plan to go to Maine for a military
8 training exercise. He knows exactly what he is doing. Now
9 that you've seen the evidence, you know that the defendant and
10 others agreed to violate the law. You know they didn't have
11 gun licenses. You know that they transported and received
12 firearms in their states of residence like New York and Rhode
13 Island, and you know that the defendant acted willfully.

14 Members of the jury, this is not a man who received a
15 gun once. This is not a one-off thing. It is not a mistake.
16 The defendant is a man who disregards the laws that he doesn't
17 like, laws that are designed to keep everyone safe. He is a
18 man who thinks he is above the law. That should end today
19 cause when you consider all of the evidence and when you use
20 your common sense, you will come to the only conclusion that's
21 consistent with the evidence and the law, that the defendant is
22 guilty.

23 THE COURT: Thank you very much. Now we'll hear from
24 defense counsel.

25 MS. BAHARANYI: Your Honor, before we begin, is it

N8UBPER4

Summation - Ms. Smyser

possible to take a brief break.

THE COURT: All right. I'm going to give you a longer break later this afternoon, but we'll take a five-minute break at this time.

(Continued on next page)

N8UBPER4

Summation - Ms. Smyser

(Jury not present)

THE COURT: Please be seated. Let me just mention in the final instructions that I sent you earlier today, there were a couple of typos on page 21. In the last sentence "willfully" means to act with bad purpose and evil intent, there should be no comma after intent, to act unlawfully even if the defendant does not know the specific law he is violating.

On page 23 in the third sentence there should be more plural, so it should read in Count One, The unlawful purpose alleged to be the object of the conspiracy is an agreement to transport firearms that were obtained outside the states of residency of the eventual receivers into the states of residency of the receivers. I've also change slightly, but not in any substantive way, the next sentence, and I'll get you all this before I give the jury the charge tomorrow. But the sentence beginning the gist of, it now reads, The conspiracy here charged is that several persons, including the defendant, agreed to a plan to commit the same kind of substantive violations.

The previous sentence had referred back to Count Two. And finally the next sentence -- and please bear in mind I added I've slight few words there. Please bear in mind the conspiracy is an entirely distinct and separate offense from the particular substantive crime charged in Count Two of the

N8UBPER4

Summation - Ms. Smyser

defendant actually receiving a specific out of state firearm in the defendant's state of residence.

Finally, with apologies to Blackstone, I think the word "evil" should be taken out of the instruction on page 21. So in addition to the typos I previously corrected, I'm correcting it by deleting the word "evil." So it now reads, willfully means to act with a bad purpose and intent to act unlawfully, even if the defendant does not know the specific law he is violating. Okay.

Defense counsel is ready, we'll bring in the jury.

MS. BAHARANYI: I am, your Honor.

THE COURT: Very good.

(Continued on next page)

N8UAAPER5

Closing Statement - Ms. Baharanyi

1 (Jury present)

2 THE COURT: Please be seated.

3 Okay, counsel.

4 MS. BAHARANYI: Yes, your Honor.

5 "That's my arm, sir. It is my constitutional right to
6 have it. I'm not doing anything wrong."

7 When Lucha El was surrounded by officers outside of
8 his home, he didn't know why they were approaching him. He had
9 been listening to music, chatting with his favorite neighbors,
10 minding his own business on a warm summer night. He had no
11 idea why they approached him. He had no idea why they
12 surrounded him. He had no idea why they were grabbing his bag
13 and he certainly did not understand why he was being arrested
14 or grabbing his arm and his bag. Lucha El, did not believe
15 that he was doing anything wrong in carrying a firearm. And he
16 certainly did not believe he was doing anything wrong in
17 receiving a firearm from a different safe.

18 Your role as a jury is not to decide whether Lucha El
19 was mistaken. Your role is not to decide whether he was wrong
20 on the law. The question for you to decide are whether the
21 government proved beyond a reasonable doubt that Lucha El
22 unlawfully received a handgun from someone that he knew, from a
23 family member and whether the government's proven beyond a
24 reasonable doubt that Lucha El agreed or conspired with others
25 to unlawfully receive a handgun. Those are the questions.

N8UAAPER5

Closing Statement - Ms. Baharanyi

1 Based on what Lucha El says, you know the answer's no. Based
2 on what Lucha El does, you know the answer is no. Based on
3 what he believes, you know the answer is no.

4 The government wants you to convict Lucha based on the
5 places that he's been, the people that he knows, the guns
6 gathered by those other people without Lucha's involvement.
7 They have weaved together a complicated tale of twists and
8 turns based on what they believe. But the truth is simple.
9 Lucha El had no intent to break the law in receiving a firearm
10 from out of state. He'd made no agreements with other people
11 to unlawfully receive or transport firearms. He had no bad
12 purpose. He did not act with bad intent. And so he is not
13 guilty.

14 So then what is this case about? Why are we talking
15 about militias in Massachusetts when we're here in federal
16 courthouse in New York City? Who are those people he made
17 agreements with and where are those agreements to receive
18 firearms? Where are the messages, the communications that show
19 you that he is receiving firearms unlawfully?

20 The government, the confusion you might feel based off
21 of what you heard over the past two and a half days, three
22 days, is a product of the government's misdirection. The
23 government's waived other people in front of you, other places,
24 other agreements to distract you from the truth that was in
25 Lucha's mind, that he was doing nothing wrong. And as my

N8UAAPER5

Closing Statement - Ms. Baharanyi

1 colleague explained in opening, what is in Lucha's mind was
2 what's matters. That is what distinguishes unlawful conduct
3 from lawful conduct.

4 I'll talk briefly about the law. The judge will
5 instruct you that the government, the government alone has an
6 extremely high burden of proving that Lucha is guilty beyond a
7 reasonable doubt on two counts. In Count One Lucha is charged
8 with conspiracy to unlawfully transport firearms out of state
9 and into the state of residency of the receiver. In Count Two
10 Lucha El is charged with unlawfully receiving or transporting
11 an out of state firearm into his state of residence, New York.

12 To prove Count One the government would have to prove
13 beyond a reasonable doubt that Lucha and at least one other
14 person specifically agreed to willfully receive or transport
15 firearms into their states of residence.

16 The government would have to prove for Count Two
17 beyond a reasonable doubt that Lucha willfully received a Canic
18 or Janic TP 9 firearm from out of state into New York.

19 For both of those counts willfulness matters. What
20 was in his mind matters.

21 Now the concept of willfulness is simple and will be
22 explained by the judge when he gives you his instructions but I
23 expect the judge to say, a person acts willfully when they do
24 something, when they act with a bad purpose. A person acts
25 willfully when they act with a bad purpose in their mind. In

N8UAAPER5

Closing Statement - Ms. Baharanyi

1 short, to prove Count One the government must prove that there
2 was some unlawful agreement and bad purpose. And to prove
3 Count Two, the government must also prove that there was bad
4 purpose. His mind matters. What was in his head matters. And
5 the government fell far short of proving these two counts,
6 proving willfulness beyond a reasonable doubt. And for that
7 Lucha El is not guilty.

8 Now a couple of days ago the government opened with a
9 story. They opened with a story about Lucha coordinating
10 purchases with the straw purchaser far off over 60 miles away
11 and coordinating these purchases for a group that Lucha was a
12 member of.

13 From the beginning this story has never made sense.
14 On the screen you can see the Western Union payment between
15 Lucha and Keith Vereen. This was a payment sent using Lucha's
16 biological name, his address, his phone number. Nothing was
17 hidden. And this is the payment that the government says was
18 for the purchase of the firearm that is described in Government
19 Exhibit 430.

20 Look at the price of that firearm, \$495. Lucha sent
21 \$350 over a week before this firearm was purchased. What straw
22 purchaser or gun trafficker buys a gun at a financial loss? At
23 a \$150 loss? That's not something that a straw purchaser does.
24 That is something that your family might do.

25 Maria Otero took the stand for her cousin, Lucha. She

N8UAAPER5

Closing Statement - Ms. Baharanyi

1 took the stand to explain to you the real relationship between
2 Lucha and Vereen. Not the straw purchaser straw, purchase
3 relation that was presented to you in openings. No. Lucha's
4 grandmother and Keith's grandmother are sisters. They both
5 grew up in the Bronx. They've attended family functions
6 together. Defense Exhibit C1, you can see Lucha surrounded by
7 family and Keith Vereen surrounded by Lucha's brother and
8 Lucha's father. This is not a straw purchaser relationship.
9 This is family. And from family Lucha accepted a handgun, a
10 handgun that had been purchased in a gun store, an FFL, a
11 handgun with a serial intact written on its side, a handgun
12 with all the appropriate markings, the manufacturer number, the
13 make, the model, the importer. Lucha did not believe that he
14 was doing anything wrong in receiving a handgun for self
15 protection in an increasingly dangerous neighborhood.

16 And Officer Smalls told you exactly what the
17 neighborhood that Lucha El was like is from. He told you
18 exactly what Lucha El's neighborhood is like, gang violence,
19 assaults, robberies. Lucha El received this handgun for his
20 own self protection. He didn't intend to disobey the law in
21 receiving a handgun. He did not act with bad purpose. He
22 accepted this from family.

23 But how will you know that Lucha did not have bad
24 purpose in his mind when you received this firearm? How will
25 you know? Well, we spoke a little bit earlier about the

N8UAAPER5

Closing Statement - Ms. Baharanyi

1 firearm but take a look at this. You can see clearly the
2 details on this firearm. As I mentioned, the manufacturer, the
3 model, the importer and ATF Agent Lennea Gordon got on the
4 stand. She explained that these markings on a firearm, they
5 are important. They are the way that the ATF can trace a
6 firearm, the way that the ATF can determine who purchased a
7 firearm, who bought a firearm. And without this information
8 without the manufacturer, without the serial number, without
9 the model, tracing these guns are almost impossible.

10 Lucha did not file off the serial number. You can see
11 it right there in front of your face. Lucha El did not remove
12 or hammer it off. He did not remove what is the easiest way to
13 prove where a gun came from and who purchased it and he didn't
14 do that. He didn't remove that because he did not believe that
15 receiving a firearm from his cousin was somehow unlawful.

16 How else will you know is that Lucha did not act with
17 bad purpose in his mind? The proof is on the video.

18 (Video playing)

19 MS. BAHARANYI: Officers approached Lucha, surrounded
20 him. He never tries to run away. He never tries to fight the
21 officers. In fact, he gives the officers his ID card with his
22 address, the address that he is standing in front of, 3318
23 Perry Avenue. He hands that to officers during this
24 interaction. He explains to officers why he believes he has a
25 right to carry that firearm. He tells them, "It's my

N8UAAPER5

Closing Statement - Ms. Baharanyi

1 constitutional right".

2 Now, if you are sitting there and you are thinking
3 everybody knows you can't have a gun in New York City, if
4 that's going through your mind, I want you to acknowledge it.
5 I want you to take those beliefs, those preconceived notions
6 and I want you to leave them outside the deliberation room.
7 Your job today is to consider the facts and evidence, the facts
8 that were presented and decide if the government's met their
9 burden, their heavy burden. And from the facts that are in
10 evidence here in this courtroom, the facts about Lucha's
11 actions about his words, about his beliefs, you'll know he did
12 not act with a bad purpose in his mind.

13 The government spent a lot of time talking about Keith
14 Vereen and Keith Vereen's trips up and down the Atlantic coast
15 in the fall of 2020. These trips are not proof of Lucha El's
16 role in the conspiracy. They're not proof of Lucha El's state
17 of mind when receiving a firearm from Keith. These trips are
18 distractions. Over dozens of slides and nearly two hours of
19 testimony from Mr. Petersohn, you did not hear any reliable
20 information on the location of the four devices that
21 Mr. Petersohn reviewed and analyzed. Mr. Petersohn, who is the
22 government's frequently used and very well paid expert or cell
23 site location consultant testified at length about cell site
24 location information. But his testimony made clear that he
25 can't pin a cellphone to a particular location. And his

N8UAAPER5

Closing Statement - Ms. Baharanyi

1 testimony made clear that the general vicinity, his estimate
2 about a phone being in the general vicinity is based on the
3 assumption that a cellphone connects to the closest tower.
4 That's an assumption you heard him say he didn't test. He
5 didn't go to the neighborhood at east Gun Hill Road in
6 Bainbridge. He didn't drive to the Bronx to check out the
7 towers that he was testifying about. He didn't do those drive
8 tests that can provide concrete information on the signal
9 strength of a tower. He provided conclusions to you, the jury,
10 without proof to back it up. But even if you were to set aside
11 our concerns about the reliability of Mr. Petersohn's
12 testimony, the reliability of his conclusions about the Bey
13 device, Lucha's device, Rodriguez's device, Vereen's device,
14 even if you set that aside and you accept his conclusions, this
15 does not mean that Lucha El was part of any elicited conspiracy
16 to deal in firearms, receive firearms, transport firearms.

17 As you know from Ms. Otero, Keith Vereen is from the
18 Bronx. he grew up in the Bronx. He has a family still living
19 in the Bronx, Maria, Lucha, all of the men in the family that
20 you saw in those photographs. He has ties here in the Bronx
21 and a community in the Bronx and all of that location
22 information could each suggest is that when he comes to town he
23 visits family. He visits his community.

24 And Mr. Petersohn was clear when I asked him, the call
25 detail records don't tell you what phone calls were about.

N8UAAPER5

Closing Statement - Ms. Baharanyi

1 Text messages, the content of text messages aren't recorded on
2 call detail records. So anything the government has to say
3 about what was said to whom or when or where, all of that is
4 speculation. They don't know. They're guessing. But you
5 shouldn't.

6 We also know from Mr. Petersohn from his
7 cross-examination that he didn't include all the towers, the
8 cell site, location towers that Vereen used when he traveled
9 between September and November 2020. What that means is he
10 didn't include all the towers that he says can help determine
11 or give a general vicinity of where a cellphone is located and
12 that's no fault to Mr. Petersohn. The government told
13 Mr. Petersohn what areas to focus on. The government gave
14 Mr. Petersohn the particular call detail record they wanted him
15 to review. The government told Mr. Petersohn, here is the
16 limits.

17 We took the time to go through the records for Keith
18 Vereen's phone. We didn't limit ourselves. We didn't limit
19 ourselves to the location or to the particular people the
20 government wants to focus on, and what we found was telling.
21 Towers and different parts of the Bronx that Vereen used that
22 weren't used by Lucha, the tower at 815 Gerard Avenue and the
23 tower at 643 Tinton Avenue used multiple times during this same
24 time period that did not show up on Mr. Petersohn's maps.

25 Towers in different cities that Vereen passed through

N8UAAPER5

Closing Statement - Ms. Baharanyi

1 that he used while he is on his trips, a tower in Ramsey, New
2 Jersey, these locations weren't provided to you. Neither were
3 the different phone numbers, phone numbers other than the
4 numbers provided by the government. Phone numbers that did not
5 show up in Mr. Petersohn's direct testimony. But there are
6 different phone numbers that the Vereen device called multiple
7 times over and over during the months of September, October and
8 November 2020.

9 We spoke at length about one of these numbers,
10 9178038650. That number showed up over 100 times over 100 on
11 Vereen's device during this timeframe. That number was not
12 part of his presentation and that number certainly didn't
13 belong to Lucha.

14 All of this matters because Lucha El had one firearm,
15 one firearm from his cousin. Yet the government wants you to
16 believe that Lucha El is somehow connected to 23 other
17 firearms. And this isn't based on any communications that the
18 government has. This isn't based on any video surveillance
19 footage that the government has. This is not based on any
20 trail of money payments. It's not based in fact. It's
21 speculation. And the call detail records show that this
22 speculation is unwarranted. Especially when there are other
23 people that Vereen contacted other places that Vereen went.
24 There were other recipients of those 23 guns.

25 Now, how else do we know that Lucha was only involved

N8UAAPER5

Closing Statement - Ms. Baharanyi

1 in receiving that one firearm, that one from his cousin? The
2 call detail record do show a pattern. The records show that
3 before Keith Vereen took his trip to New York on August --
4 excuse me -- October 1, 2020? Before that trip he spoke to
5 Lucha multiple times. There are five calls between Vereen and
6 Lucha before that trip. Again, this trip where Keith Vereen
7 purchased the firearm that was given to Lucha, the one, these
8 communications with Vereen coordinating with Lucha before
9 leaving South Carolina and before arriving in New York. But
10 for every other trip discussed by the government, Vereen's
11 device only communicates with Lucha when Vereen is already in
12 New York City. He is already in town. There's no coordination
13 beforehand. For his trip -- excuse me -- for the purchase of a
14 gun in South Carolina on September 12 and September 13 Keith
15 Vereen's device connected with Lucha only after Vereen was
16 already in New York. There is no coordination. There is no --
17 arrangements. For the gun purchased on October 21, 2020 and
18 then the trip that Vereen took after that gun purchase, there
19 were no phone calls between Lucha, Lucha El and Keith Vereen,
20 none, no coordination, no planning, nothing.

21 And finally, for that last trip that was discussed,
22 the gun was purchased on October 31st. Vereen's trip was from
23 October 31st to November 1st. His device didn't connect to
24 Lucha's a single time. No communications. No arrangements.
25 No coordination. The pattern of these communications was

N8UAAPER5

Closing Statement - Ms. Baharanyi

1 September 14 through October 21st, for October 31 is consistent
2 with Vereen saying hey, cousin, I'm in town, when he shows up.
3 It is not consistent with Lucha coordinating gun purchases. If
4 Lucha were working with Vereen to coordinate the purchase of
5 nearly two dozen firearms worth thousands of dollars for
6 himself or for anyone else, you'd see proof of that. You'd see
7 a conversation. A message, arrangements, phone calls at the
8 time of purchase or before the purchase. There is nothing like
9 that here and there is nothing like that because Lucha did not
10 receive or conspire with anyone else or Keith Vereen to receive
11 23 firearms. Lucha had one gun. And for that one gun he
12 accepted it from his cousin without knowing that he did
13 anything wrong.

14 Now, the government does claim that Lucha, the
15 government claims that Lucha coordinated purchases of firearms
16 for a group, a group that he had joined and a group that is
17 planning to go camping and conduct firearms training in Maine.
18 The government told you in openings that Lucha El wasn't only
19 charged with the important task of coordinating firearm
20 purchases for the group but he was a trusted member of their
21 inner circle. From the two and a half days of testimony that
22 you heard you now know this story was another distraction. The
23 only thing that the government got right about Lucha El and his
24 membership or relationship to that group is they planned to
25 learn and train with firearms and camp out in July 3, 2021,

N8UAAPER5

Closing Statement - Ms. Baharanyi

1 that group. And there's no question that Lucha El knows
2 members in this group. But Lucha was not a trusted member of
3 the inner circle responsible for receiving or transporting
4 firearms. He was not involved in the planning of this training
5 in July 2021. And he certainly did not coordinate with others
6 receiving or transporting firearms for this training.

7 This afternoon we spent a long time on text messages
8 and group chats a couple of hours. This particular group chat
9 which is Government Exhibit 1202A involves dozens of Moors and
10 was created by Mr. Abdullah Bey, the owner of the chat. And,
11 yes, in this chat there is conversation about a training in
12 July 2021. But look closely at the numbers. The phone numbers
13 and the people who were involved in this group chat. Lucha
14 El's not one of them. He's not a member of this group. We
15 spent hours talking about text after text, group chats, duo
16 chats that Lucha was not part of: Lucha's name and his number
17 was not part of this thread because he is not part of this
18 conversation. Lucha did not receive any firearm packing list.
19 He did not receive new firearms, packing lists from this group
20 thread. Again, he was not in this conversation. He's not a
21 trusted member of this inner circle. He isn't the middleman
22 for firearms. He want even in the group chat.

23 Not a single one of the messages that you saw today
24 during the government's last witness involves Lucha discussing
25 firearms. There is not a single text with Lucha discussing how

N8UAAPER5

Closing Statement - Ms. Baharanyi

1 to obtain firearms, send firearms, transport them across state
2 lines, coordinate the purchases of firearms for other people,
3 nothing. No text. No communication. That's because Lucha had
4 nothing to do with obtaining firearms for this group.

5 And with this particular group the absence of text is
6 not out of a fear of detection. They are not trying to hide
7 how much they valued the second amendment. They are not trying
8 to hide how much they, how proud they are to possess firearms.
9 They have no problem discussing plans with firearms by text
10 message.

11 You can see on the screen this is one of the messages
12 shared in the group. This message discussed Marine Corp, the
13 use of different maneuvers, the use of close combat. These are
14 not individuals who are afraid of firearms or anything in that
15 realm and is not afraid of putting it in writing.

16 Lucha is not in any of these texts because he never
17 agreed to transport or receive anyone's state of residence a
18 firearm. These messages are sent in group chats and group
19 texts without Lucha by people who are not Lucha and have
20 nothing to do with Lucha.

21 The government's own theory about why Lucha would have
22 been gathering or helping others gather firearms for a July
23 2021 training makes no sense chronologically. You see from the
24 messages Lucha is told about this training in May 2021. Those
25 told about this training by someone named Jamil Bey. The

N8UAAPER5

Closing Statement - Ms. Baharanyi

1 government's story is that Lucha worked to purchase or
2 coordinate purchases with Keith Vereen in September and
3 October, November 2020 for a training that he hadn't even been
4 invited to until May 2021. That doesn't make sense. The
5 chronology doesn't make sense. The timeline doesn't make sense
6 and that's because Lucha was not coordinating with anyone to
7 receive or transport firearms out of state.

8 A lot was made, a big deal was made out of Lucha's
9 arrest in Massachusetts. This arrest in Massachusetts with
10 other members of this training group is not proof that he was
11 part of a federal conspiracy to receive firearms into his state
12 of residence. It is just a final distraction. That's it.

13 And how do you know this is a distraction? Well, you
14 saw the DMV record for different people that the government
15 believes were involved in this conspiracy. No one's state of
16 residence? Massachusetts. Not a single person lives there.
17 Massachusetts is not the state of residence for any of people,
18 any of the other people mentioned this case, not a single
19 person could be found guilty for receiving a firearm into the
20 state of Massachusetts because they don't live there.

21 But beyond the problem, the geography for the
22 government Lucha doesn't say or do anything in this arrest that
23 proves his membership in is conspiracy. His membership in a
24 conspiracy to receive guns into states of residence. He was
25 not the leader of this group. He was not the spokesperson for

N8UAAPER5

Closing Statement - Ms. Baharanyi

1 this group. You heard Trooper Casey testify that he couldn't
2 really recall ever interacting with Lucha in Massachusetts.

3 The government made a very big deal about what a
4 headshake meant during this Massachusetts arrest. I want us to
5 take a look at that again.

6 (Video played)

7 MS. BAHARANYI: Stop there.

8 The government asks you to assume from that clip those
9 few seconds that Lucha's headshake meant that he knew the guns
10 were not stolen, that he new where the guns came from, that he
11 somehow agreed with other people to transport guns into
12 Massachusetts or into other states of residence. They asked
13 you to make layers and layers of assumptions about what this
14 head shake meant.

15 So use your common sense. There is only one right
16 answer when the leader of your group approaches you and another
17 individual, asks you are any of these firearms stolen right
18 before you are about to get arrested by the police. A
19 headshake. That headshake says nothing about the origins of
20 the guns. That headshake says nothing about whether the guns
21 were received into states of residence and that headshake is
22 truly just a headshake in a moment where Lucha appeared
23 bewildered was largely silent and panicked.

24 There were guns found inside of the cars in
25 Massachusetts. Now I want to take a moment to discuss those

N8UAAPER5

Closing Statement - Ms. Baharanyi

1 guns. The government has asserted claims that Lucha somehow
2 brought these guns or coordinated with others to bring these
3 guns from New York to Rhode Island to Massachusetts. But of
4 the nine guns that were inside of those cars, zero had any
5 connection to Lucha. One was purchased by Keith Vereen. The
6 other eight don't even show up on the list of purchases that
7 Vereen made. And for the single gun that shows up in those
8 cars that's connected to Keith Vereen, Lucha didn't send any
9 money to Keith for that gun. There aren't messages between
10 Keith Vereen and Lucha about this gun. And Lucha was certainly
11 not stopped in Massachusetts holding this gun. That's because
12 Lucha never possessed this firearm. He was in no way connected
13 to it. And the government's claim that Lucha brought,
14 tailgated with these guns from New York to Rhode Island to
15 Massachusetts is a statement and claim that you've seen
16 absolutely no fact or evidence to support and that's because it
17 didn't happen.

18 So really, why did you hear so much about
19 Massachusetts from two different witnesses? Why were you shown
20 photographs of big guns that Lucha never touched and Lucha
21 never bought and never brought? Why has the government spent
22 so much time talking about other people and other places? The
23 reason is because the government does not have proof that Lucha
24 willfully disobeyed the law. And that is because Lucha did not
25 violate the law. He did not know that he was doing anything

N8UAAPER5

Closing Statement - Ms. Baharanyi

1 wrong or unlawful. He did not form any agreements with other
2 people to do anything wrong or unlawful, to receive firearms
3 into other states of residence. He had no bad purpose in his
4 mind. He formed no bad agreements and that's the simple truth.
5 And fortunately for Lucha, the government has not find a word
6 on this. There are important legal principles that protect
7 Lucha El and there is you, the jury.

8 Judge Rakoff will tell you in a few moments or perhaps
9 tomorrow that there are two fundamental protections that exist
10 for people in Lucha's position, people accused of crimes that
11 they did not commit. The first, the presumption innocence.
12 The second, reasonable doubt. These protections are put in
13 place to make sure that we don't wrongfully convict people.
14 Make sure we don't wrongfully convict innocent people like
15 Lucha El.

16 These principles protect Lucha today just as they
17 would protect any of you sitting in those chairs. The
18 presumption of innocence means that we presume that Lucha is
19 innocent and that can be very easy to say. But it can
20 sometimes be hard to do. So here's a good way to think about
21 it.

22 Think of someone you admire, you respect, maybe a
23 sibling, a parent, a close friendly. Now imagine you get a
24 call one day and you are told that this person that you admire,
25 this person you respect, this person that you trust committed a

N8UAAPER5

Closing Statement - Ms. Baharanyi

1 serious crime like the one Lucha El is charged with. Imagine
2 how you would feel, the shock, the disbelief. No way. That
3 feeling is the presumption of innocence. That is the way that
4 the law requires you to feel about Lucha El. You must presume
5 that Lucha did not act willfully or with bad purpose to violate
6 the law when he received a firearm from his cousin. You must
7 presume that Lucha did not agree with other people to violate
8 the law, to unlawfully receive firearms into their states of
9 residence. That's what the presumption of innocence requires
10 in that case.

11 Now the second fundamental protection that's in place
12 for all of us is reasonable doubt. Before the government can
13 convict someone convict, a person of a serious crime they have
14 to prove their case beyond a reasonable doubt. The judge will
15 instruct you in a moment on what that means as well. And I
16 expect he will tell you that reasonable doubt is doubt that
17 would cause a reasonable person to hesitate to act in a matter
18 of importance in their life.

19 Proof beyond a reasonable doubt is so convincing that
20 you would not hesitate to rely on it in your important affairs.
21 This is a high burden. This is an extremely high burden,
22 higher than what it takes for the state to take someone's child
23 away, and it has to be high.

24 Proof beyond a reasonable doubt is what protects
25 innocent people like Lucha El from wrongful conviction. Only

N8UAAPER5

Closing Statement - Ms. Baharanyi

1 if the government satisfies its burden, proves its case beyond
2 a reasonable doubt, can you convict Lucha. But they can't in
3 this case because he did not act unlawfully. He did not act
4 with bad purpose. And if you are left with any questions about
5 what Lucha El really intended when he received a firearm from
6 his cousin, then you have reasonable doubt and the government
7 has not proved its case

8 MS. SMYSER: Objection.

9 THE COURT: Well, I will give you tomorrow morning the
10 exact definition of reasonable doubt and that will be what
11 governs.

12 MS. BAHARANYI: If you are having trouble
13 understanding how Lucha fits into that conspiracy with people
14 he's never spoken to about firearms, he's never communicated
15 with about firearms, people who have their own group chats,
16 their own conversations and their own agreements, if you are
17 having trouble connecting those dots, that is reasonable doubt.

18 And if you have lingering questions about Lucha El's
19 state of mind or lingering questions about the conspiracy
20 because of all the people you did not hear from, then again,
21 the government has not met its burden. You have another reason
22 to doubt.

23 And of course, if based on all of the evidence and the
24 lack of evidence, you conclude that Lucha El never unlawfully
25 received or agreed with others to unlawfully receive firearms

N8UAAPER5

Closing Statement - Ms. Baharanyi

1 into their states, then you must find Lucha, Lucha El not
2 guilty.

3 In Spanish, "Lucha El Por Libertad" means quite simply
4 "the struggle for freedom". And throughout this case we asked
5 you to focus on Lucha. We've asked you to call him by his
6 right name to honor him. And even as the government dangles
7 distraction after distraction in front of you and even when
8 they stand back up after me to remind you of those
9 distractions, what matters is what Lucha El intended, what was
10 in his mind. He did not receive a firearm into New York with
11 the intent to violate the law. And he never agreed with others
12 to unlawfully receive firearms into their states of residence.

13 Lucha El Por Libertad should not be sitting in that
14 chair. Like I said, "Lucha El Por Libertad" means "the
15 struggle for freedom". And, jury, today you have the power.
16 You have the ability and you have the duty to help him in that
17 struggle. When you finished what is a very heavy
18 responsibility of deliberating in this case I will ask you to
19 return the only just verdict, not guilty.

20 THE COURT: Thank you very much.

21 All right. Ladies and gentlemen, I will give you a
22 15-minute break at this time.

23 (Recess)

24 (Continued on next page)

N8UBPER6

Rebuttal - Ms. Nicholas

1 THE DEPUTY CLERK: Jury entering the courtroom.

2 (Jury present)

3 THE COURT: Please be seated. All right. Now we'll
4 hear rebuttal from the government.

5 MS. NICHOLAS: Your Honor, may I proceed?

6 THE COURT: Please.

7 MS. NICHOLAS: Ladies and gentlemen, I'm not going to
8 respond to everything you just heard because I don't need to.
9 You sat through this trial. You know that a lot of what you
10 heard just doesn't make any sense. A little over an hour ago,
11 my colleague Ms. Smyser walked you through the evidence in this
12 case. She took you through step by step each part of the proof
13 that shows the defendant is guilty. I'm not going to redo that
14 now, but there are a few points that were brought up by defense
15 counsel that I do want to respond to, and those are points that
16 have very little to do with the evidence in the case; things
17 that are intended to distract you. Because when you look at
18 the evidence, when you closely examine the government's
19 exhibits, when you think about the testimony you heard from the
20 witnesses that sat on that stand under oath, you will come to
21 the only conclusion that's consistent with that proof that the
22 defendant is guilty.

23 Now before I go any further, I want to talk about the
24 burden that the government bears in a criminal case. I told
25 you in my opening statement that the government would prove its

N8UBPER6

Rebuttal - Ms. Nicholas

1 case beyond a reasonable doubt. The defense talked about that
2 burden. They refer to it as a heavy, heavy burden, and it is,
3 and we embrace it. We don't run from it. Of course that's the
4 standard. We embrace it, but it's not a magical standard.
5 It's the standard that's guided by common sense, and it's not
6 insurmountable. It's the standard that's been used in every
7 criminal case in the history of this country. It's been met
8 before, and we've met it here.

9 I want to be clear that the defense has no burden. We
10 embrace the burden that sits on the government's table and
11 never leaves. But when a defendant through their counsel
12 decides to make arguments, you should scrutinize those
13 arguments just like you do any other piece of evidence. So
14 let's talk about some of those arguments. Defense counsel
15 invited you to make your decisions in deliberation based on
16 what the defendant said and what the defendant did. So let's
17 talk about what the defendant said.

18 When the defendant is standing on the sidewalk in the
19 Bronx after having just been placed under arrest for possessing
20 a gun, his response is not confusion. It's not a desire to do
21 the right thing, to make sure he's in compliance with the law.
22 His response is to say, I'm not worried about a permission. A
23 permit is permission. I'm not giving my right away. I'm not
24 going to do it because I am above the law and I can do what I
25 want.

N8UBPER6

Rebuttal - Ms. Nicholas

1 Let's keep going. Same interaction. Starting at line
2 18. "Telling me I need a permit. I don't need a permit. A
3 permit is permission. You should learn that. You guys take
4 your oaths to uphold the Constitution, not to uphold legalities
5 and regulations and mandates and all that extra stuff. You
6 took your oaths to uphold the Constitution."

7 What he's saying there? I know there are laws. I know
8 there are rules. There are legalities and regulations and
9 mandates, all that extra stuff. I know. But you guys should
10 ignore it because that's what I'm doing. It doesn't apply to
11 me. I can do what I want. That's what he says. And what does
12 he do? He gets arrested. Officer Smalls tells him he needs a
13 permit. Does he go apply for a permit? Does he try to make
14 sure that he gets in compliance with the law because he
15 respects these gun laws and he wants to make sure he's done the
16 right thing. Absolutely not. He packs his guns in his car in
17 the Bronx and he heads to Rhode Island. He heads to Rhode
18 Island where he gets arrested again with guns. And we're going
19 to talk more about that arrest.

20 Defense counsel said that none of those guns had any
21 connection to Lucha. One of those connections is the man on
22 the right, Jamal Latimer. Ladies and gentlemen, what the
23 defendant says to the police in the Bronx, "We could argue this
24 in court. I'd deal with this in court. I don't need a permit
25 for that. It's my constitutional." That should sound familiar

N8UBPER6

Rebuttal - Ms. Nicholas

1 because it's the same thing Jamal Latimer says in
2 Massachusetts. "Of Course, so here's the thing. It's already
3 going to court. I already know it's going to court." That's
4 not a firmly held belief. It's a script. These guys know
5 they're going to court. They know they're going to court
6 because they know they're breaking the law. And here we are.
7 We are in court. We have seen the evidence.

8 Why did they think they were ending up in court?
9 Because they knew about the legalities. They knew about the
10 mandates. They knew about the regulations, and they decided to
11 ignore it because they're above the law. They knew all those
12 gun laws existed. They didn't like them, so they didn't follow
13 them. He thought he could do whatever he wanted and get away
14 with it. Not anymore. Now, the defense knows that the
15 evidence here is overwhelming, so the best thing they can try
16 to do is distract you. They can try to persuade you to care
17 about things that don't actually matter in the case, and they
18 offered a lot of distractions hoping that you'd mistake those
19 distractions for reasonable doubt.

20 We saw some slides. One of those slides the defense
21 showed you had a bunch of names and places on it, things they
22 said were the government's attempts at distraction. But let's
23 stop and scrutinize exactly what the defense just tried to
24 characterize as distractions. One of the things on that list
25 was Keith Vereen. Far from a distraction. Keith Vereen is the

N8UBPER6

Rebuttal - Ms. Nicholas

1 straw purchaser that the defendant used to avoid having to
2 follow the gun laws. Another thing on that list, Myrtle Beach,
3 South Carolina, where Keith Vereen bought the guns for the
4 defendant.

5 Another name on that list, Jamil Abdullah Bey, Jamal
6 Latimer, the leader of the group. We're going to come back to
7 him in a second. On that list Wakefield, Massachusetts where
8 they get arrested with all of these guns. Another name on that
9 list, Jamil Bey. Not only is he there in Massachusetts, but
10 you also know he sent a wire payment from a Western Union in
11 the Bronx to Keith Vereen in South Carolina. Another name on
12 that list, Ricardo Rodriguez, also sent a wire payment from the
13 Bronx to Keith Vereen in South Carolina. Far from
14 distractions. These are essential elements of the case. These
15 are the facts that prove to you beyond a reasonable doubt the
16 defendant was working with other people to acquire guns from
17 out of state and have them brought to his state of residency.

18 Let's talk about some things that are actually
19 distractions. The fact that the defendant and Keith Vereen are
20 cousins. That makes sense. Keith Vereen committed a federal
21 crime for the defendant. He lied on forms under which he had
22 an obligation to be truthful. That's a big risk for somebody
23 you don't really know, but maybe that's a risk you're willing
24 to take for a member of your family. That makes sense.
25 There's nothing mysterious about that. And I want to stay on

N8UBPER6

Rebuttal - Ms. Nicholas

1 that for a second to talk about just how absurd it is to think
2 that a relationship with your cousin could explain what was
3 going on between these two people. A lot of people have
4 cousins that live out of town. Those cousins may very well
5 travel into town to visit them. They may come at the holidays.
6 They may stay for a few days, maybe they bring flowers, maybe
7 they make a stop, get a nice bottle of wine before they get to
8 the apartment. What they don't do is drive directly to your
9 apartment from a gun store. They don't bring handguns with
10 them. They don't just swing by at three in the morning almost
11 directly from a gun store. They don't just come to town for
12 about 12 hours right from the gun store and head back to South
13 Carolina. That's not consistent with a social relationship.

14 What is that consistent with? That's the relationship
15 between co-conspirators. These men weren't just cousins. They
16 were men who were working together to break the law. Western
17 Union. A few points on Western Union. First, the defense
18 tried to suggest that it's only a single payment so you should
19 ignore it. Of course it's a single payment. We're talking
20 about committing serious federal crimes. You heard a witness
21 sit on that stand for almost 30 minutes and explain to you in
22 detail all the information that Western Union records when you
23 come and you use their service. They write down your name,
24 your phone number, your address. They maintain all of that
25 information. You're committing a crime, and you do that once.

N8UBPER6

Rebuttal - Ms. Nicholas

1 You may realize it's a pretty bad idea, maybe we shouldn't do
2 it again. Maybe going forward, I'll just pay cash.

3 Let's talk about the amount of cash. Defense counsel
4 seem to suggest that the fact that a \$350 payment is less than
5 the particular price for a particular gun is somehow persuasive
6 evidence that that wasn't a firearm purchase. I think defense
7 counsel said something to the effect of what kind of gun
8 trafficker accepts partial payment. Well, what kind of out of
9 state firearms recipient make a full payment before they have
10 the gun in their hand. It's a down payment. I'll send you the
11 350 now. You go buy the gun. And then when I see you in New
12 York when you put the gun in my hand, I'll hand you the rest of
13 the cash. There's nothing nefarious about that. That's
14 exactly what they're doing. It's not a mystery. It's not a
15 partial payment. It's a down payment, a down payment between
16 co-conspirators.

17 Now defense counsel ask you to leave your preconceived
18 notions at the door. That's not actually what they're asking
19 you to do. What they're actually asking you to do is leave your
20 common sense at the door, because when we really look at the
21 evidence in this case and use our common sense, it's very clear
22 what was going on here. You don't need to know what was said
23 in the phone calls to understand what was happening in these
24 communications. And this is important because the evidence in
25 this case came in, in pieces, and each piece of that evidence

N8UBPER6

Rebuttal - Ms. Nicholas

1 is like a puzzle piece. None of it tells the whole story by
2 itself. Put it altogether, and that's what Ms. Smyser did for
3 you in her closing. She explained to you how all these things
4 fit together, which is why it's such a problem that defense
5 counsel kept one of those pieces from you when they tried to
6 suggest that there wasn't a pattern.

7 Defense counsel told you, look, on September 21 there
8 were five phone calls. And then time goes by, and then there
9 is a gun purchase on October 1st. That's the only time they
10 talked between gun purchase. That's the only time there's
11 communication before a gun purchase. That one shows you
12 there's nothing to worry about here. Ladies and gentlemen, the
13 Western Union payment from the defendant to Keith Vereen was on
14 September 22nd. So it's not September 21st silence, gun buy.
15 It's September 21st, set up the payment, talk about how to get
16 this done. September 22, Western Union payment, then gun buy.
17 Every single piece of this puzzle is critical in understanding
18 how this story fits together. It's not a complicated tale like
19 defense counsel called it. It's quite simple. It's quite
20 simple.

21 Now, the pattern of those purchases is obviously
22 important. Communications, gun buy, travel, meeting; but so is
23 the fact that the defendant was arrested twice with the guns
24 bought by Keith Vereen. It's not some random pattern the
25 government cobbled together. It's a clear pattern shows how

N8UBPER6

Rebuttal - Ms. Nicholas

1 those two guns ended up in his hands. You also heard testimony
2 about encrypted messaging applications, Signal, What'sApp. The
3 defendant learned his lesson at Western Union, don't leave a
4 paper trail, don't give up all your information. We saw a text
5 from one of the defendant's co-conspirators, you, download
6 Signal. It's more private. I want to talk about text for a
7 couple of minutes because defense counsel really focused on
8 this group chat. You heard that Lucha's name doesn't come up
9 anywhere in the thread. That's just not true.

10 MS. BAHARANYI: Objection, your Honor.

11 THE COURT: Overruled.

12 MS. NICHOLAS: Lucha has been abducted on weapon
13 charges, not sure what the PC on why they even stopped him.
14 The response. Nobody responds, who's Lucha. What are you guys
15 talking about. The response is all about getting bail money.
16 There's concern. They're asking for updates. This isn't just
17 some random person they reported has been arrested. This is a
18 member of their group. They're worried about him. They're
19 getting ready to go for training, training with guns. They're
20 concerned about somebody in their group getting arrested with a
21 gun.

22 There's also suggestion that the packing list never
23 made it to the defendant, that he's not really part of this
24 group. Ladies and gentlemen, you saw the videos. He got the
25 packet list. He's got body armor on. He's got gloves on.

N8UBPER6

Rebuttal - Ms. Nicholas

1 He's wearing his BDUs. He's in camo, his hat. He's got the
2 whole thing going. He knew exactly what he was suppose to be
3 wearing when he went to this training. He got the packing
4 list. He got the message, and he got the other message. We're
5 above the law. We do what we want. We like guns. We like
6 traveling with our guns. We're going to get them regardless of
7 what the law says about it.

8 Now, there's an important moment in one of those
9 videos that both parties have talked a lot about, and over the
10 course of the case, ladies and gentlemen, there's often little
11 moments that tell you everything you need to know. Let's watch
12 this video.

13 (Media played)

14 (Media stopped)

15 MS. NICHOLAS: Let's put this in context. The leader
16 of the group, Jamal Latimer, he is trying to figure out whether
17 or not the weapons that his men, those are his words, my men.
18 He's trying to figure out if the weapons that his men are
19 carrying are stolen. He wants to know what's the status of
20 these guns. In that moment, who does he go talk to? All those
21 people you saw on the list that were arrested that day when
22 Latimer wants to know what's the status of my guns, he talks to
23 the defendant and he talks to Jamil Bey, two men that you know
24 sent wire payments from New York to South Carolina.

25 And in that moment when he's approached by the leader

N8UBPER6

Rebuttal - Ms. Nicholas

1 of the group, what does he do? He tells the truth. He shakes
2 his head. They're not stolen. The only way he could say that,
3 the only way he could indicate to the leader of his group,
4 we're good, they're not stolen, is if he knew where the guns
5 came from. And he wasn't worried, ladies and gentlemen,
6 because he thought he outsmarted the law. He was using a straw
7 purchaser. He was having his cousin walk into gun stores and
8 lie for him. He thought the paperwork looked good. He thought
9 he'd outsmarted the system. So as long as the cops don't think
10 these guns are stolen, we're good, because I made sure the
11 paperwork was clean because I knew what I needed to do was get
12 guns from out of state. I knew I needed to get these guns
13 unlawfully. That's exactly what he did.

14 Now there's only a few more points I want to make.
15 They're really all related. And what they are things that are
16 just not defenses in this case, things that defense counsel
17 asked you to think about which are simply not relevant. The
18 fact that the defendant lived in the Bronx and felt like he
19 needed a gun for safety is not relevant. Just because you want
20 a gun or feel like you need a gun doesn't mean you get to make
21 little exceptions to use for yourself for gun laws. There are
22 properly and legal ways to do things, and then there's
23 violating the law. The defendant decided that the law that
24 applies to everyone didn't apply to him. The fact that his
25 straw purchaser was his cousin, not a defense as we talked

N8UBPER6

Rebuttal - Ms. Nicholas

1 about, just explains why they trusted one another. And the
2 fact that he's not a leader in the conspiracy, doesn't mean
3 he's not in the conspiracy.

4 In fact, I expect that when Judge Rakoff instructs you
5 on the law, he's going to tell you that the defendant not
6 necessarily need to be fully informed of all the details of the
7 conspiracy in order to justify an inference of membership.
8 He's obviously part of this conspiracy. He's sending money.
9 He's making phone calls. He's showing up. He's showing up
10 with guns.

11 Ladies and gentlemen, very shortly Judge Rakoff is
12 going to instruct you that what I say is not evidence, nor is
13 anything else that any of the lawyers have said. You, the
14 jury, are entrusted with finding the facts in this case. When
15 you do that, look pass all of the distractions. Look at the
16 evidence, scrutinize the evidence, put the puzzle pieces
17 together. Members of the jury, it's clear what happened here.
18 The defendant lived in New York. He got guns from South
19 Carolina. He knew what he was doing, and he knew it was
20 against the law. Members of the jury, the defendant is guilty.

21 THE COURT: Thank you very much. All right. Ladies
22 and gentlemen, even though you were kind enough to agree to
23 stay till 4:45 if necessary, turns out not to be necessary, so
24 tomorrow we will begin promptly at 9:30. First order of
25 business will be for me to give you my instructions of law, and

N8UBPER6

Rebuttal - Ms. Nicholas

1 I'll take about a half hour and then the case will be yours to
2 deliberate. So to prepare for that, don't even think about the
3 case tonight. Don't discuss it with anyone. I don't know if
4 the Yankees are playing tonight. They played last night and
5 they won and that was so amazing to me to see. I was in pure
6 ecstasy. In any event, don't even think about this case, but
7 tomorrow it will be yours to deliberate after I give you your
8 instructions. Have a very good evening, and we'll see you at
9 9:30.

10 (Continued on next page)

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

N8UBPER6

Rebuttal - Ms. Nicholas

(Jury not present)

THE COURT: Please be seated. So the only thing that remains is the verdict. I just sent you a tiny revision of it, but it's essentially what you've seen previously. Any objections to the verdict from the government?

MS. SMYSER: No objections from the government.

THE COURT: Any from the defense?

MS. BAHARANYI: Your Honor, I think we did request a special verdict form.

THE COURT: You did and I considered that. I almost never do that except when the Second Circuit has expressly stated that it wants a special verdict. And the reason is that after more than 300 jury trials, it seems to me clear from talking to the jurors afterwards that the important part of jury service is the jury's overall feeling about the case based on the evidence and based on the instructions of law. The main advantage of a special verdict is to make it easier for the Second Circuit. Rather than having to send back a case if they think there's been some question raised, they say, oh, we got a special verdict, and now we know whether that question was resolved or not by the jury. I have nothing but admiration for the folks in the Second Circuit. They have their job and I have mine, so I will not give a special verdict in this case.

MS. BAHARANYI: Your Honor, no further objections on that then. On the jury charge briefly, not to take up too much

N8UBPER6

Rebuttal - Ms. Nicholas

1 time.

2 THE COURT: Go ahead.

3 MS. BAHARANYI: But we have received the Court's final
4 instructions, and I think we object to the Court not accepting
5 our versions of the --

6 THE COURT: I should make clear on the record that all
7 previously raised objections to the charge are fully preserved
8 for purposes of the appeal.

9 MS. BAHARANYI: The only additional one was for the
10 conspiracy, the first element. We raise an objection to that
11 as well regarding the wording of that charge, that it seems
12 like it might marshal a bit of the government's evidence or
13 case.

14 THE COURT: In what respect? Some of the things they
15 asked for would have done that, but I rejected their proposals.

16 MS. BAHARANYI: We're grateful for that, your Honor.
17 This is just on that first paragraph.

18 THE COURT: I left my copy downstairs. Let me get it.
19 Which page?

20 MS. BAHARANYI: On page 23, the wording of this
21 particular instruction, the last sentence in that about, The
22 gist of the conspiracy here charged is that several persons,
23 including the defendant agreed to obtain and transport several
24 out of state firearms in order to enable the conspirators to
25 receive these firearms in their state of residency. In reading

N8UBPER6

Rebuttal - Ms. Nicholas

1 that it seems like there is some sort of leaning towards the
2 government's sort of fact pattern and evidence there.

3 THE COURT: All I'm saying is that's what's charged.
4 This is in -- just so the record is clear -- the paragraph
5 reads "Starting with the first essential element, what is a
6 conspiracy. Conspiracy is an treatment or an understanding of
7 two or more persons to accomplish by concerted action one or
8 more unlawful purposes, known as the object or objects of the
9 conspiracy. In Count One, the unlawful purpose alleged to be
10 the object of the conspiracy is an agreement to transport
11 firearms that were obtained outside the state of residency of
12 the eventual receiver into the state of residency of the
13 receiver. I have already instructed you on the essential
14 elements of that underlying crime when I instructed you on
15 Count Two. The gist of the conspiracy here charged is that
16 several persons, including the defendant, agreed to obtain and
17 transport several out of state firearms in order to enable the
18 conspirators to receive the firearms in states of their
19 residency."

20 I'm not understanding what you think is more than a
21 fairly straightforward statement of what the charge is.

22 MS. BAHARANYI: For one example, conspiracy only
23 requires one other person. It's certainly the government's
24 view that this was a conspiracy involving several individuals.

25 THE COURT: Do you want me to change -- several of

N8UBPER6

Rebuttal - Ms. Nicholas

1 course could include two, but do you want me to change several
2 to one or more?

3 MS. BAHARANYI: One moment, your Honor. There's a
4 reason why we consult experts. I'm going to withdraw that
5 particular objection.

6 THE COURT: Very good.

7 MS. BAHARANYI: I think the Court may have already
8 addressed this yesterday, but we do maintain our objection to
9 the Court not charging the good faith defense theory defense.

10 THE COURT: I think that has been the heart of many of
11 your objections right now, and it's fully preserved for
12 purposes of appeal.

13 MS. BAHARANYI: And then our very last piece on this,
14 this is outside of the jury instructions, your Honor. But
15 regarding the slides that were used in the government's
16 presentation of its summation, we do believe that there -- the
17 slides were prejudicial, particularly the one that I objected
18 to with respect to the firearms in combination with the
19 government's comment that, These guns came from Lucha. And
20 it's a level of prejudice that warrants a mistrial in this
21 case, so that we would be moving for a mistrial on the basis of
22 this prejudicial presentation or slide show that was presented
23 with their summation.

24 THE COURT: Let me make sure I understand your
25 argument. You previously made the argument which I rejected

N8UBPER6

Rebuttal - Ms. Nicholas

1 that those, for lack of a better word, bigger guns were
2 prejudicial. And I have rejected that because I think it was
3 part of the evidence of the conspiracy.

4 So what further objection -- that objection is fully
5 preserved. Is there anything more that you were objecting to?

6 MS. BAHARANYI: I think there is just the added level
7 of prejudice we believe comes with including those images
8 again, and all of the things that came in about Massachusetts,
9 we would move for a mistrial. We understand the Court may not
10 grant it.

11 THE COURT: Yes. That motion is denied.
12 Notwithstanding your apparent view that Massachusetts is a
13 foreign country far removed from the Southern District of New
14 York, last I checked federal law applies to the entire United
15 States, and that includes conspiracies that occur anywhere in
16 the United States, as long as some act occurs in the venue. So
17 that objection is denied.

18 MS. BAHARANYI: I think just to preserve that issue
19 for our sake, your Honor, we'd ask to have the exhibits -- not
20 the exhibits, the presentation used to support summation moved
21 I guess -- excuse me. It's been a long day.

22 THE COURT: I know.

23 MS. BAHARANYI: Entered as Court exhibits.

24 THE COURT: How is the Court of Appeals going to be
25 able to view that?

N8UBPER6

Rebuttal - Ms. Nicholas

1 MS. BAHARANYI: Right.

2 THE COURT: I think that all the videotapes are in
3 evidence.

4 MS. BAHARANYI: I think for the language and the
5 presentations, that's not going to be actually part of the
6 record.

7 THE COURT: On appeal you can say, in their summation
8 on page 75, at lines three and four, they referred again to
9 this highly -- in your view, highly prejudicial image and said
10 the following. And attached to our brief is a photograph of
11 the image that they put on the -- the Court of Appeals will
12 allow that. I don't think they will even count it against your
13 25 pages.

14 MS. BAHARANYI: I'm not the expert on that, but I do
15 think we just want to make the record clear about what was
16 presented to the jury.

17 THE COURT: Okay. Very good. Thank you very much. I
18 have another matter so if you can all clear out and we'll see
19 you tomorrow at 9:30.

20 MS. SMYSER: Your Honor, we have two brief things we
21 want to raise.

22 THE COURT: Go ahead.

23 MS. SMYSER: The first is on this sentence on the gist
24 of the conspiracy that we were just talking about. I do think
25 that --

N8UBPER6

Rebuttal - Ms. Nicholas

1 THE COURT: The next case is, by the way, mostly about
2 Maryland, which is even more remote than Massachusetts.

3 MS. SMYSER: This sentence makes a reference and says
4 that the conspiracy was to transport several out of state
5 firearms in order to enable the co-conspirators to receive the
6 firearms. Our view is that that should be transport any
7 firearms, because one firearm is sufficient for a conspiracy.

8 THE COURT: So you think that the language that they
9 were objecting to and then withdrew their objection, you now
10 think is too favorable to them, and that makes me think I got
11 it right. No, this is just the gist of what you argued. I
12 make clear elsewhere that you only need one conspirator. I'm
13 very clear on that in the instruction that you only need one
14 firearm. That's all contained elsewhere in the instructions.
15 But my effort in all of this as was pointed out the other day
16 is to present the jury with something that is simple English
17 that corresponds to what they've just heard and seen and I
18 think that sentence really is consistent with that, so I will
19 leave it as is.

20 MS. SMYSER: Understood. Finally, the government
21 wanted to bring up is that defense counsel in her closing
22 statement made several mentions of this case being about
23 Lucha's belief followed by a statement about his Constitutional
24 beliefs.

25 THE COURT: Well, I think mostly just at the very

N8UBPER6

Rebuttal - Ms. Nicholas

beginning.

MS. SMYSER: At the beginning, there were several.

THE COURT: And I was waiting for you to stand up and object because given our entire discussion previously, that was the time to object. But you decided to sit on your derrière, and I think it's much too late now to raise that objection. My own view is, although she came awfully close to the line that I had forbidden, I'm not sure she went over that line. She was careful. So, anyway, I don't think she went over that line. But in any event, the objection was waived by not making it at the time.

MS. SMYSER: Understood, your Honor. We just ask for the record, making a request for a curative instruction based on --

THE COURT: We can have a curative instruction right after we have the new trial because of the mistrial that your adversary wants. All denied.

MS. SMYSER: Understood.

THE COURT: Very good. Okay. Anything else?

MS. SMYSER: No, your Honor.

THE COURT: Very good. We'll see you all tomorrow at 9:30.

(Adjourned to August 31, 2023, at 9:30 a.m.)

INDEX OF EXAMINATION

Examination of:	Page
-----------------	------

JULIA GUTIERREZ

Direct By Ms. Nicholas	370
----------------------------------	-----

Cross By Ms. Baharanyi	431
----------------------------------	-----

MARIA OTERO

Direct By Ms. Baharanyi	437
-----------------------------------	-----

Cross By Ms. Nicholas	444
---------------------------------	-----

GOVERNMENT EXHIBITS

Exhibit No.	Received
-------------	----------

532A and 533A	365
-------------------------	-----

532 and 533	367
-----------------------	-----

902	390
---------------	-----

1201, 1202A, 1202B, 1202B1, 1202B2,	407
---	-----

1202B3, 1202C, 1202D, 1202E,

1202F, 1202I, 1202J, 1204,

1207A, and 1208

1301, 1302A, 1303A, 1303B and 1303C	425
---	-----

1402A	428
-----------------	-----

1008	433
----------------	-----

DEFENDANT EXHIBITS

Exhibit No.	Received
-------------	----------

C1	442
--------------	-----